XIV

MEMORIAL

TO

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL

WITH

NOTES ON THE PROPOSED RENT LAW &C.

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BY

THE BEHAR LANDHOLDERS' ASSOCIATION.

BANKIPORE.

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TO

THE HONORABLE SIR ASHLEY EDEN K. C. S. I.
LIEUTENANT-GOVERNOR OF BENGAL.

The humble memorial of the
Behar Landholders' Association

MOST RESPECTFULLY SHEWETH,

That Your memorialists have read with the deepest concern, the Report of the Rent Commission, and the Draft Rent Bill, and beg to approach your Honor with the following memorial :—

2. The circumstances under which the Rent Commission in Calcutta was appointed, are thus set forth in the letter from the Government of Bengal to the Government of India published at pp. 227 and 228 Vol. II of the Report. "The Lieutenant-Governor, it will be remembered, in view of the loud and constant complaints put forward by the Zemindars as to the difficulty under the present law of collecting even undisputed rents, was anxious to provide them at an early date with a reasonably summary procedure to enable them to overcome the passive resistance of their Ryots, provided that the Ryots' tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process." The original scope of the legislation was thus very limited: Government was bound to redeem a pledge which it had given more than once to the Bengal Zemindars to simplify the procedure for the recovery of rent; and it was bound to see that the Ryots' right did not suffer unduly by such enactment. The policy apparently was to reconcile the Zemindars to the new responsibility cast upon them of collecting the Road and Public Works Cesses from the Ryots and of punctually meeting the Government demands on these accounts, by affording them increased facilities in the collection of their rents.

3. During the discussion which has been going on for the last few years on the subject, this policy has undergone some change. The policy which has dictated the Draft Rent Bill is thus set forth in the Remarks of Mr Mackenzie (Report Vol I p. 112.) "At present the Zemindars complain that they cannot enhance in spite of all the advantages given them by Act X which is the first law recognising definitely their rights to enhance with reference to the value of the produce. I would not myself remove any one of the practical difficulties now in their way unless they consent once for all

to recognise the Ryots' beneficial interest. If they want to see their own present position improved, they must, I submit, consent to all reasonable measures which will secure the general improvement of the country. I would take from them no income which they now enjoy, but I would not give them the ready means of making more, unless they are prepared to assist in recognising and restoring the rights of the cultivators." This is the policy of *Quid pro quo* distinct from the policy of conciliation adverted to above.

4. The changes proposed by the Draft Rent Bill are not, however, in consonance with either of these lines of policy. There is no summary law facilitating the collection of rent, and there is thus no fear of the rights of Ryots suffering unduly from such summary process; there are, as your memorialists show in their note annexed to their memorial, several radical changes in favor of the Ryots, trenching upon the vested rights of the zemindars, and no new rights, no new advantages are conceded to the zemindars as a compensation. In so far, therefore, as legislative interference has been deemed necessary to satisfy the requirements of the above lines of policy, it becomes absolutely unnecessary when the few Bengal zemindars, who were loud in their complaints as to the difficulties experienced under the present law of collecting and enhancing rents, now see that a remedy for the cause of their complaints is not possible even with the unsettlement of all the existing laws and the confiscation of half of their rights.

5. The Behar zemindars had not, however, made any such complaint and the above arguments for a change of law, trenching against their vested rights, cannot be urged against them. But your memorialists are aware that as regards Behar legislation is thought necessary because of the poor and depressed condition of its peasantry. The argument assumes that the condition of the Behar peasantry is poor and depressed, that this poor and depressed condition is owing to some defect of the land system as it prevails in Behar, and that owing to these defects, their condition is deteriorating from day to day. Your memorialists have taken the liberty of showing in their note how groundless these assumptions are.

6. The members of the Rent Commission in concluding their report, thus sum up the justification of their proposed measure :—

"1st. That the advantages offered by the Bill to the landholders are a full equivalent for any thing proposed to be given to the Ryots.

"2nd. That those who would think otherwise have to be reminded that in the opinion of *some*, the ryots are entitled to demand more.

"3rd. That the power of the legislature to re-distribute property in land

at any time when such re-distribution is required in the interest of the entire community is undoubted.

"4th. That if such re-distribution has for its immediate result the impairment of existing rights, compensation is usually given by all civilized legislatures, but in the opinion of the Rent Commission nothing contained in the Draft Bill constitutes such a case.

"5th. That all its provisions fall well within the power reserved to the Government at the Permanent Settlement to make laws for the protection and welfare of dependent Talukdars and Ryots".

Your memorialists most respectfully beg to offer a few short remarks on each of these points :—

7. As for the advantages offered to the landlords being a full equivalent for those proposed to be given to the Ryots, your memorialists have simply to refer to the advantages of the respective sides under the Bill as summed up by the Commissioners themselves in the last paragraph of their Report, to show that while on the Ryots' side the rights are substantial and new, and so much subtracted from the sum of zemindary rights as guaranteed to the zemindars under the Permanent Settlement, the advantages offered to the zemindars are *nil*.

8. As to the second point, your memorialists most respectfully beg to submit that judges, who ought to be the guide in the interpretation of the laws and rights of parties under them, have more than once emphatically declared that the Ryots were not only not entitled to ask for more, but that even the rights conferred on them by the Legislature by Act X of 1859, were an invasion on the rights of landholders. Sir Barnes Peacock suggested the repeal of Sec. 6 of Act X of 1859, conferring on the Ryots the right of occupancy on the ground "that it interferes with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the Ryots which had no previous existence." The present Chief Justice is quite as strong in his opinion on this point. He says "Now, however wise and politic this provision (Sec. 6 of Act X of 1859) might have been, it seems to me impossible to deny that it operated as an invasion of the landlords' rights as conferred upon them by the Permanent Settlement."

If the learned interpreters of the laws have thus declared the meaning of the law, your memorialists most respectfully submit that the opinion of *some*, who chance to think otherwise, being opposed to authoritative ruling, is not entitled to any very great weight.

9. How far the power of the legislature to re-distribute property extends, and under what circumstances of grave necessity in the interest of the entire

community, such power can be exercised, it is not for your memorialists to enquire, but to your memorialists to whom (as to all loyal subjects the honor of England is dear and who are unable to believe that the word of the British Government can be broken) the mere enunciation of such doctrine in connection with a case where the Government is solemnly pledged to keep intact the property for all time o come, appears fraught with incalculable mischief, and this the more so, as in the present instance, such an enunciation is quite out of place, for it is certain that the Local legislature for which the Draft Bill has been prepared, can never exercise such power of re-distribution, especially as no circumstance of grave necessity in the interests of community, under which alone, it is said, such power could be exercised has arisen in the present case.

10. The majority of the Commissioners while admitting that compensation is allowed by all civilised legislatures, when the re-distribution, has for its immediate result, the impairment of the existing rights, think that nothing contained in the Draft Bill, constitutes such a case. Your memorialists have simply to refer in reply to the special provisions for Behar, under one section of which rent payable in kind is not to exceed half the gross produce. Now as a matter of fact in many cases the Zeminders' proportion in Bhowli tenure is nine-sixteenths of the produce and the immediate result in these cases when the zemindary rental is Rs, 9,000 will be to reduce it to Rs 8,000. As your memorialists show in their note, the effect of most of the provisions is the immediate impairment of zemindary rights.

11. Do the provisions fall well within the power reserved to the Governor-General to make laws for the protection and welfare of dependent Talukdars and Ryots? Your memorialists most respectfully submit, not;—it could not have been ever contemplated that this reservation of power to enact laws for the Ryots' welfare, would carry with it the power to create new rights in their favor, without the consent of the Zemindars; for, if that was so, the Permanent Settlement would mean nothing. It is not alone by increasing the amount of fixed assessment that the Permanent Settlement is broken; but also by impairing in other ways, the existing rights of Zemindars, and as it was never intended at the date of the Permanent Settlement that the amount of Public Revenue should be ever enhanced, it was never contemplated at that date that Government should do any thing that would in any way deteriorate the value of Zemindars' property. Your memorialists imbued as they always have

been with a high regard for the honor, integrity and good faith of the British Government, can never believe that your Honor, whose administration has been always marked by these high principles of action will countenance a measure which will vitally affect the existing zemindary rights.

12. Your memorialists most respectfully beg to draw your Honor's attention to the Notes on the Rent Law, which they have drawn up and in which they have taken the liberty to criticise the Draft Rent Bill, section by section, as far as they have been able to do within the limited time allowed to them for the purpose. Your memorialists have serious grounds to apprehend that the provisions of the Bill will be injurious alike to the interests of the Zemindars and the present body of their tenantry; that as regards Behar it will seriously affect the interests of agriculture, and your memorialists pray that your Honor will be most graciously pleased not to allow the Draft Bill to be presented in Council, or if your Honor be pleased to deem it fit to be presented in Council, such modifications in its provisions be made as would trench least on the vested rights of parties.

And as in duty bound, your memorialists shall ever pray.

Bankipore,
Behar Landholders' Association Office,
Dated, 1880.

Maheshwar Baksh Singh, Maharajah of Doomraon.
Rajendra Kishore Singh, Maharajah of Bettiah.
Lakshmishwar Singh, Maharajah of Durbhangah.
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Hurbuns Sahai.
} Honorary Secretaries.

NOTE ON THE RENT LAW.

BY

The Committee of the Behar Landholders' Association.

NOTE ON THE DRAFT RENT BILL.

Part I *Chapter* I *Sections* 8, 9, & II.

No good whatever is derived by the arbitrary rule laid down in Sec. II. On the contrary, unless the Legislature were to declare sub-lettings illegal, it will bring in sub-infeudation at present not much known under the Behar system. The Zemindars' profits will come to be divided among a number of middlemen ; the only advantage (a very trifling one) gained by the actual cultivator being that if he is an occupancy ryot, under a tenure or under-tenure created by Sec. II, the enhanced rent cannot exceed ¼th of the average annual value of the gross produce of the land for which the rent is payable, whereas in the case of his holding under an occupancy ryot, it can come up to *three-tenths*. (Sec. 23, clause *c*.)

The limits of enhancement of rent of tenures and under-tenures as laid down in Secs. 9, 10 and 12 will, in point of fact, render all enhancement practically valueless to the proprietors. To take a concrete example : A Zemindar lets out in a single demise 500 bigahs at 1 rupee per bigah for reclamation to a tenant, who becomes a tenure-holder under Sec. 11 ; the tenure-holder lets out to two individuals in quantities of 250 bigahs to each by single demises; these are under-tenure holders of the 1st degree under (cl. *b*, Sec. 11) and the under-tenure holders of the 1st degree let out to other people at 125 bigahs to each. These are under-tenure holders of the 2nd degree. These let out to Ryots. After the actual cultivators have held for 12 years, an enhancement can be made only on grounds stated in Sec. 22. The enhanced rent cannot however be double of that previously paid. We will suppose the previous rate paid by ryots to have been I rupee 4 annas per bigah and the enhanced rate to be 2 rupees 4 annas. The enhanced rent collected by the under-tenure holders of the 2nd degree would be Rs. 1125. The fair and equitable rent to which under-tenure holders of the 1st degree would be entitled from the under-tenure holders of the 2nd degree will be three-fourths of Rs. 1125 or 844 allowing five per cent as charges for collection of rent and twenty per cent as profit to the under-tenure holders ; the under-tenure holders of the 1st degree can have their rents enhanced fairly and equitably only to the amount of three-fourths of Rs. 844 or 633 allowing the same deduction in this case also. This will be the enhanced rent received by the tenure holder who in his turn can be equitably and fairly called on to pay only three-fourths of Rs. 633 or 475 to the proprietor.

The profit to Taluks under the Regulation was fixed at 10 per cent of the rents collected. (Vide Sec. 8 Reg. V of 1812.)

There does not appear to be any reason why tenure or under-tenure holders under Sec. 11 when they cultivate themselves should be entitled to any profit under Sec. 9 or 12. This is simply allowing them to retain a percentage of the average annual value of the gross produce—a percentage which the occupant ryots are not entitled to retain.

This is not the only advantage accorded to them over occupant and other ryots. As the Bill stands at present some of these advantages can be enumerated as follow :—

1st. There is no provision for ejectment of holders of land by a single demise of more than 100 bigahs. If the demise be not for a *term certain*, once installed they will continue to hold on for ever if they do not make default in the payment of rent.

2nd. In the case of these holders of more than one hundred bigahs, rents can only be enhanced under Sec. 9 and the limits fixed by that section and Sec. 12 whatever be the period of their holdings. They are not like 3 years' Ryots, or Ryots who held for

less than 3 years, to pay whatever rent is demanded by the landlords. This will render their tenancy ! *permanent* even if it be intended to deny *this permanency* to holders of less than 12 years.

3rd. No restriction to the right of such holders to mortgage the lands. The tenure are also liable to sale for the satisfaction of decrees other than rent decrees.

4th. Illustration (*b*) of ground (1) of Sec. 22 shows that in cases of accretion occupant Ryots are to pay a fair rate for the lands accreted. It can be more than the rate of rent paid for the lands to which the excess lands are accretions ; whereas under Sec. 8, the increase of rent, in the case of under-tenure is to bear to the rent previously paid the same proportion which the increase of area bears to the previous area of the tenure.

5th. There will be no restriction to the use of the lands demised to tenure-holders under Sec. 11 to any purpose whatever if there be no contract restricting its use. (Vide Sec. 77.)

Holders of more than one hundred bigahs are not ordinarily that class of helpless ryots for whose protection and welfare the legislature intends legislating. To all reasonings they do not deserve that consideration which actual cultivators do require ; and should not certainly be placed in a better position than they. As regards the transferability of these tenures and under-tenures the same objections apply as to the transferability of occupancy holdings. These will be considered under Sec. 20.

Section 10. The explanation attached to this section applies only to clause (*b*). From the non-application of the explanation to clause (*a*) it would appear that if to a tenure of 100 bigahs, 200 bigahs alluvial lands of the same quality are accreted the rent cannot be more than double the rent hitherto paid ; or in other words, 200 bigahs will come to be held at the rate payable for 100 bigahs ; this is inconsistent with the rule of proportion laid down in Sec. 8, unless the two sections are intended to fix two different and distinct limits to the power of enhancement in such cases.

Chapters II, III, IV & V. The arrangement and some restrictive words, as also the note appended to Sec. 28 seem to indicate that these are distinct chapters, each fully describing the rights of a separate class of ryots. It does not seem to be the intention that all the rights of an inferior class shall attach to superior class. Chapters IV. and V are distinctly restrictive to the classes whose rights they describe. There is of course no restrictive words to Chapter III ; and it may be that the correct interpretation of the sense of the legislature may be that Chapters II and III are to be read together. A number of rights of Ryots described in Chapter II, that is the 1st class ryots who deserve more consideration than the rest are left to be defined to the chance of this interpretation. It is not perhaps intended that the rights of this class should be determined by custom alone, as it would be, if the statutory rights given to ryots described in Chapter III were not to apply to them.

The point should be made clear.

Chapter III *Section* 19. A ryot holds 50 bigahs in Bhowli tenure. He cannot cultivate the whole quantity every year, but allows 5 bigahs to remain fallow in each year ; these 5 bigahs not being always the precise land. He can be said to pay rent by delivering a share of the produce only for the lands he actually cultivates in each year. Under the definition as it stands, he cannot have a right of occupancy in the land so held and cultivated by him ; though he may hold and cultivate for more than 12 years.

There is a tenure in Behar called Hastabood, under which money rent, the rate of which is determined previously, is paid for the lands actually brought under cultivation, whatever may be the quantity of land comprised in the Ryots' holding. It will be difficult to determine under the definition when rights of occupancy will accrue in such a case.

A Thicadar or an Ijaradar is not a tenure holder under Sec. 11 for he holds under a lease for a term of years at the expiry of which he is bound to vacate. It would seem from the provisions of cases under which a right of occupancy may be acquired under Explanation 3 of Sec. 19, that a right of occupancy cannot be acquired under a Thicadar or an Ijaradar. The provision does not at all seem just to Ryots.

A, an Indigo planter holds 99 bigahs of Asamiwar lands under a terminable lease and is allowed to hold on for more than 12

years after the expiry of the lease. It would seem under the provisions of case (7) of Sec. 79 that his tenancy can be terminated by a notice to quit, if he has not acquired a right of occupancy. There is however no restriction in Sec. 19 to the acquisition of a right of occupancy by holding *for a term*, Asamiwar lands; it would therefore appear that right of occupancy can be acquired in such cases unless it be said that Explanations 3 (clauses *a*, *b*, *c*) of Sec. 19 are exhaustive in their nature and Explanations 4 (clauses *e* to *h*) of the same section are not exhaustive.

From the absence in Section 11 of those explanations which are attached to Sec. 19, it seems that the right under that section may be acquired in the following cases.

(*a*.) By an Ijaradar, Thicadar or farmer of rents, in lands which is a portion of his Ijarah.

(*b*.) By a tenant, who when he was first let into possession of land, by his landlord, contracted in writing with such landlord that a right under the section should not be acquired in such land. This also seems to follow from the wording of the section itself, which says that the demise shall be a tenure notwithstanding any contract to the contrary.

There does not appear to be any reason why the holders of more than 100 bigahs should be thus favored over the holders of one hundred bigahs and less, and private contracts thus over-ridden to give them a statutory right.

(*c*.) By a proprietor Mokararidar or Istemrardar or other tenure or under-tenure holder who gives his lands in Ijara or Thica, and then by a single demise, comes to hold from the Thicadar more than one hundred bigahs of land.

(*d*.) Though as we have seen, a right of occupancy will not be acquirable by holding land under a Thicadar or Ijaradar, a right under Sec. 11 will be thus acquirable, for there is nothing which restricts the acquisition of the right in this case.

Section 20.

In the vast mass of literature on Rent Law, collected together by the labor of the members of the Rent Commission, we do not find a single sentence authorizing the transfer of more occupancy rights. On the contrary the Rulings under Act X of 1859 and Act VIII of 1869 (B. C.) are against it and there is a significant passage in Harringtons's Analysis quoted at page 408 of the Rent Report Vol. II. clearly showing that the Ryots had no such power of alienation even in good old days. The passage is to the following effect :—"On the whole, therefore, I do not think Ryots can claim any right of alienating the lands rented by them, by sale or other mode of transfer, nor any right of holding them at a fixed rent except in the particular instances of Khudkast Ryots, who from prescription have a privilege of keeping possession as long as they pay the rent stipulated for by them." (Extract from Harrington's. Analysis p. p. 269 ; 281 & 301.)

From the above passage we find that the Ryots as a body, whether Khudkast or Pikast had not the right to alienate their holding by sale or other mode of transfer ; that in the particular instance of Khudkast Ryots who from *prescription*, enjoined certain rights, that right never extended beyond holding at Pergunah rates of rent and their not being liable to be disturbed in their holding so long as they continued to pay such rent. It is said that the landholder can care for nothing so long as he gets his rents; it does not matter from whom? The very argument which Lord Cornwallis used against arbitrary eviction of ryots when rent was ordinarily rack-rent, is now sought to be pressed in favor of purchasers of Ryots' rights under condition of things when rents happen to be no longer rack-rents. The present learned Chief Justice, in his valuable minute on the proposed new Rent Law printed at p. 380 of the Rent Report Vol. II, thus disposes of this argument :—

"But assuming this to be the true view of the matter, what becomes of the justification for invading the landholder's rights, if the ryot is to be allowed, as soon as he has acquired his right of occupancy to get rid of it altogether? If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the Ryot to transfer his interest?

"It seems to me that this view of the Zemindars' position is rather lost sight of in Mr. Field's note; and I think, moreover, that it is hardly fair to suggest that Zemindars ought not to object to the transferability of Ryots'

tenures upon the ground that the measure would be merely unpleasant or injurious to themselves.

"It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. And considering that in this instance the Legislature are dealing substantially with the two great branches of the agricultural interest—landlords on the one hand, and tenants on the other—the former have at least a right to insist that no measure ought to be passed which would be *unpleasant* or *injurious* to them, unless some solid advantage is to result from it to the general public."

It is positively injurious to the landlord, for, not to speak of the *unpleasantness* of having Ryots installed against their will; they become losers to the extent by which the Ryot gains; if instead of the Ryot's selling his right of occupancy to a stranger, a zemindar could give the right to the same party with the Ryot's consent the zemindar would obtain a share of the money value of such right; the consent of both, being necessary under the present law for a valid transfer.

Considering the question in a Ryot's point of view, the learned Chief Justice says "I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape or way." (P. 382 Vol. II Rent Report.)

This is the very view of the case, which was taken by the Behar Landholders' Association in their Memorial submitted to His Honor, the Lieutenant-Governor last year. This memorial, as stating all their objections to the transferability of occupancy rights they annex as an appendix to the present note.

It is now generally admitted that the poverty-stricken condition of the Deccan Ryots for whose special relief, a law which trenched against the rights of a class and which ignored all private contract, was enacted only last year, was owing among other causes, to the transferable nature of their tenure. The following quotation is taken from a letter dated 29th February 1879 from the Secretary to the Government of India to the Secretary Government of Bombay, circulated along with other papers for opinion on the Deccan Ryots' Relief Bill.

("14) Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India) there is undeniable evidence in the report before us that the very improvements introduced under our rules such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

["15.] The saleable value of the land greatly increased the credit of the Ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed to. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure—marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in undue proportions."

It is said that the Bengal Ryots are not to be judged by the standard of the Ryots of Deccan or other parts of India; but whatever point of difference there may be between the Ryots of Bengal proper and the Ryots elsewhere in India, and whatever advantage the former may have over the latter in their habit of prudence, the same can by no means, be safely asserted with respect to the Beharis. With them, with landlords and tenants alike, there is unfortunately no lack of the great stimulant to Hindu expenditure—marriage ceremonies.

Perhaps it will be said that as mortgages are forbidden, the Ryot cannot borrow on the credit of their lands; but if they cannot mortgage their lands, they can sell; and as will be shown in a subsequent part of this note, there are many ways under which the law restricting mortgages can be easily evaded.

If again Bengal Ryots are not to be judged by the standard of Ryots in other parts of India, they ought at least to be judged by the standasd of those who are admittedly their betters. Not long ago, the following note by Mr. Hertslet, the Consul at Konigsberg on the practical working of the German land system went round the newspapers:—

"Landed estates, can be sold, parcelled out into the smallest free-holds, and disposed

of in any manner without any difficulty or expense beyond the contract stamp of 1 per cent. Renting of farms is almost unknown. Agriculturists buy the land, including barns and dwellings living and dead inventories at a price agreed on, pay usually a quarter or a third of the money down, and the rest is hypothecated on the estate, large or small : the hypothec banks generally advancing the money at 5 per cent, which cannot be demanded back, but may be gradually sunk or paid off by yearly instalments. But notwithstanding the facility of buying or selling landed property, the agriculturists are always complaining, and it is understood that at least two-thirds of them are in money difficulties, and public sales by the courts of law are of constant occurrence. The most of the nominal proprietors have not sufficient capital to work or cultivate property and most of them are in difficulties when the interest on the hypothecated debt is due. It is also remarkable that, with the exception of a very few estates which are entailed under the law of primogeniture by a small number of the higher nobility, hardly one estate has remained in the same hands or family for fifty consecutive years, and it appears to be hard on a proprietor to sink such capital in landed property, which must in most cases be sold at his death."

Even Mr. Mill, who saw nothing but good, in the system of peasant proprietorships, says, "undue sub-division, and excessive smallness of holdings, are undoubtedly a prevalent evil in parts of Germany and Flanders." (Mill's Political Economy Vol. I. p 366.)

But however good, the peasant proprietorships may be in countries where they are so to say, indigenous to the soil, where the habit of the people favors such a system of land tenures, and where as in Norway, Belgium, France, there are existing checks to an overgrowth of population imposed either by law or the salutary customs of the people, it does not follow that we could secure an equal amount of good by transplanting the same land system in Bengal and Behar where over-population, subletting and subdividing are the prominent features in the economic condition of the peasantry. * Add to this, the chronic indebtedness of our people, and the danger of the measure becomes at once manifest. While there is to be subdivision in one hand, there is every possibility of accumulation of these small holdings in the hand of capitalist Mahajans on the other—and side by side, with the present race of Zemindars as annuitants on their own land, there will spring up landed proprietorships of another kind with Mahajans as owners; thus the only good we derive from the measure, is to sweep away the present race of our peasants.

It is noteworthy, how when the land question has been a burning one for centuries in Ireland, the introduction of the system of peasant proprietorships of Belgium and France into Ireland has not been advocated by those who are best able to pass an opinion on the subject. With reference to this subject Emile De Laveleye says :—

"In Flanders you do not find the land subdivided in the way it is in Ireland, according to Lord Dufferin, who has shown the evils of the kind of sub-division practised there; from his description it appears that in Ireland at the death of any holder, and often even during his lifetime, the children

* In the 24 pergunahs which are now comprised in the District of Gya the total number of estates in 1789, was 744 and the number of proprietors 1160; in 1871, the number of estates was 4411; and the number of registered proprietors 20453. In eighty years, therefore, each estate has on an average been split up into 6; and where there was formerly one proprietor, there are now eighteen, (Statistical Reporter Vol XII p 126). In 1790, there were 1232 separate estates on the Rent-roll of the Patna district, as then constituted held by 1280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gya district, the number of estates on the Rent-roll of the district amounted in 1870-71 to 6075. The number of registered proprietors had increased to 37,500. Allowing for the increase in the size of the District by the addition of the Behar sub-division, the number of estates under the Patna Collectorate had quadrupled since the original assessment in 1790; and where there was, formerly one proprietor, there are now probably twenty. (Statistical Reporter Vol XI. p. 187.) In the district of Tirhut, the figures are more marked. In 1790, there were 1,321 estates held by 1939 registered proprietors. In 1871, the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter Vol, XIII p 168.) So long ago as 1789, Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If subdivision has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy holdings.

divide the lands among themselves, each of them building a cottage on it; or, if the tenant has no children, he sub-lets his land to several small farmers, and allows them to settle on it, notwithstanding the stipulations of the lease. Such breaking up of the land must lead to the most wretched farming, and to pauperism on the part of the tenants. As long as the Irish farmer has no better understanding than that of his own interest and of the requirements of a sound economical system, no agricultural policy, neither fixity of tenure nor even ownership in fee-simple could improve his condition. Although the population of Flanders is twice as dense as that of Ireland, a Flemish peasant would never think of dividing the farm he cultivates among his children; and the idea of allowing a stranger to settle and build a house on it, and farm a portion of it, would appear altogether monstrous to him. On the contrary, he will submit to extraordinary sacrifices to give his farm the size and typical shape it should have.

"How is it that the Fleming and the Irishman hold such different points of view? I think it is partly due to the difference of race, and partly to circumstances. The Celt, being more sociable, thinks most of the requirements of the members of his family, whilst the Teuton thinks more of the requirements of the soil and of good cultivation.....But supposing the Irishman to become the absolute owner of his farm, would he learn and comply with the requirements of the land? A Flemish farmer's son always wants to have a good farm of his own; he would not put up with a hovel improvised on a potato field. Could the Irishman but be brought to practise agriculture as an art, and not as a mere means of bringing a subsistence from the soil, he would soon abandon the miserable system of sub-division which he has adhered to so long. But how is this state for agriculture as an art to be imparted to him? To extinguish the influence of instincts or tendencies, whether inherent in the race or the historical product of centuries, would it suffice to introduce an agrarian constitution in Ireland similar to that of Flanders, or, better still, Switzerland? These are questions which I confess myself not in a position to answer; but they are questions which those who have the Irish land question to solve ought to face, when considering the land system of Flanders." (Cobden Club Essays.)

It is significant to observe that in enacting for the N. W. Provinces in 1873, the Supreme Council, did not think it expedient to give a statutory right of transfer to 'right of occupancy'—the mere creation of Act X of 1859, in Bengal as well as in the North-West.

Section 9 of Act XVIII of 1873 (the North-Western Provinces Rent Act) runs as follows:—

"The rights of tenants at fixed rates shall be heritable and transferable.

"No other right of occupancy shall be transferable by grant, will or otherwise, except as between persons who have become by inheritance co-sharers in such right.

"When any person entitled to such last mentioned right dies, the right shall devolve as if it were land, provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this section."

The tenants at fixed rates are thus defined in Section 5:—

"All tenants in districts or portions of districts permanently settled, who hold lands at fixed rates of rent which have not been changed since the Permanent Settlements, shall have a right of occupancy at those rates, and shall be called 'tenants at fixed rates'."

Thus occupancy right is not only not transferable; but not even heritable under the law as it prevails in the North-Western Provinces.

Is there any reason why incidents which are denied to occupancy holdings in the North-Western Provinces, either from a regard to expediency or from a regard to the existing rights in that province, shall be attached to occupancy rights in Bengal and Behar. If the Ryots of the lower Provinces are not to be judged by the standard of the Ryots of the North-Western Provinces, it should also be borne in mind that the Ryots of Behar are not to be judged by the standard of the Ryots of the lower Bengal; and that there would be fewer chances of mistakes if they were to be judged by the standard of the Ryots of the North-West.

As regards Behar, the majority of the members of the Behar Rent Commission who in one respect at least had the advantage

over the members of the Rent Commission sitting in Calcutta, that they knew the people of this province better, were of opinion that it is not desirable to alter the existing law on the subject. On a further reference to the members by the President after the sitting of the Commission was over, it appears that only 4 out of 15 members, being perhaps the original minority were for unrestricted transfer. It is noteworthy to remark that two of these members are Indigo planters themselves, or persons interested in Indigo planting; the other two, Messrs Worsley and Finnucane would not allow subletting if transferability of occupancy rights were to be recognized by law. Two other members would only allow transfer to *bonafide* cultivators; the other members, being the majority remained opposed to such transferability.

If then transferability of occupancy rights be recognized by law, let the legislation be at least experimental. Let it prevail as an experimental measure in *Government Khas Mehals* and let power be given to the Lieutenant-Governor to extend it to other parts of the country if the experiment proves a success. The Committee of the Behar Land holders' Association would also suggest, that in the interest both of the landlords and existing Ryots, the new statutory right be so fenced in with restrictions that it may not prove very injurious to either.

With respect to the proposal for transferability of occupancy rights Sir Steuart Bayley, in a note on the proposed Rent law for Behar says: "25. I would also adopt Mr. Worsley's subsidiary proposals, making occupancy rights transferable by sale so long as there is no outstanding decree for rent; and I would make them resumable by the zemindar as *forfeit* when rent is not paid within 15 days of a decree. Of course these suggestions, will, as pointed out, increase litigation, but I am firmly convinced that the more the question of the existence of occupancy rights is forced into Court, the more will the enjoyment of them be secured to the cultivator." Sir Steuart Bayley, though persuaded to believe that the measure will lead to litigation, concurred in the proposal of a restricted kind of transfer, on no better ground than that the question being forced into Court, would make the enjoyment of the right of occupancy secure to the cultivator. He would not take away the landlords' right of re-entry for nonpayment of rent decreed; nor allow occupancy rights to be sold so long as there would be an outstanding decree for rent.

The Committee of the Behar Landholders' Association beg to make the following humble suggestions:

That the landlords' right of re-entry be left intact, and option be allowed to them either to exercise the right of re-entry, or to bring to sale the occupancy rights of their tenants with the proviso that if once they choose to put to sale such rights, the transferee's right of subsequent transfer be unrestricted. They would also suggest that such rights be not made saleable in execution of any other decree than a rent decree due to the *entire* estate; and that *bonafide* transfer by Ryots be restricted to Ryots of the same estate, giving the landlord the option of purchase at the highest price offered. These limitations also trench on the vested rights of zemindars, and they are suggested simply because sales under such restrictions obviate many of the objectionable features in the provisions as now proposed. As the provisions in the draft Bill stand at present, the statutory right of occupancy, stands on a better footing than putney Taluks.

Section 20 [*d*]

This povision, it is to be feared, will be easily evaded, by the very processes which gave rise to *Baibilwafa* Mortgages, or by the Ryot's letting out his land to his Mahajun from whom he borrows money (say 100 rupees) for a rent of Rs. 45 and then taking back a lease on a higher Jumma say 75 rupees for 6 years. At the end of 6 years, the Mahajun gets Rs. 210 for 100 rupees lent; and if such lettings and re-lettings be not made absolutely illegal, the Mahajun's lien over the property in the shape of a rental will be enforceable by suits in the courts.

section 20 (*e*)

A, a ryot stipulates in writing that he shall not convert his agricultural holding, into a garden by planting fruit trees and that he shall be liable to ejectment if he do so. He acts contrary to the stipulation and the landlord obtains a decree for ejectment. He shall nevertheless be entitled to receive compensation for the fruit trees under Sec. 29; or in other words,

the Ryot will be entitled to receive compensation for 'improvements' being the very breach which forms the ground of his ouster. If in a case of this kind, the Ryot makes 'improvements' after the breach of the stipulation, is he to be entitled to compensation for such improvements?' And if he is, will he not try to resist ejectment by a spasmodic effort at improvements, so as to be able to make the longest bill for such compensation.

Section 21. Compare this with Sec. 83. It will be found that Ryots holding even for less than 3 years [*i. e.*] tenants-at-will at Bhowli tenure in Behar will be in a better position than the corresponding class, in Bengal proper holding in *Bhagjote* and even than the occupancy holders at such tenure in Bengal, for whether the Ryots in Behar receive any assistance from the landlord or not in producing the crop, the landlord's proportion of the produce will be never more than half. [Vide Sec. 83. Behar special provisions.]

Section 22. *ground* [1] *Illustrations* Now as the Ryots are divided in to so many classes, the word *same class of Ryots* ought to mean one of the classes in which the Ryots are classified under the Act. The illustrations however show that very nice shades of distinction are to be drawn and attended to and the interpretation of the words 'same class of Ryots' is to be left entirely to the courts in each particular case. This rendering the ground uncertain, and proofs difficult, will practically make enhancement impossible under this head.

Sections 23, (*a, b, c.*) On the subject of the enhancement of rent the Commissioners remark: [Page 24 Vol I Report.]

"Whether then the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely, that the ruling power ought to determine the rents payable in these provinces by the Ryots to the Zemindars. In this view the appropriate theory of rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits to capital; but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the Zemindars, or those to whom the Zemindars have transferred their rights. If it be asked on what principle Government should determine this proportion,—what share shall be considered fair and equitable,—one answer is,—such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land." Under this theory of rent the Commissioners have imposed on the Zemindars' demand of rent, limitations which involve a redistribution of the property in the soil, and a confiscation of a portion of the Zemindars' existing rights. That the ruling power, has under certain exceptional circumstances of grave necessity, the right of making such a redistribution, no one can deny; but the question is whether such grave necessity exists in the present case; and whether such a power, should be formulated in a convenient theory of rent. The immediate result of the various limitations imposed upon the landlords' right of demand of rent, is the impairment of a number of their existing rights. As regards Ryots with rights of occupancy the matter of enhancement of rent under grounds 3 and 4 has years ago been settled in a certain way which is now accepted as law both by landlords and tenants. As will be seen from the concrete examples noted below the effect of the limitations imposed, is to control the rule of proportion in cases where the rate of rent determined according to this rule is favourable to the landlords, and how can it be denied that in so far it is a clear case of confiscation of existing rights.

A, a ryot pays 4 rupees as rent per bigah producing 12 maunds of crops valued at 12 rupees. The price rises, and this value becomes 16 rupees. The rent enhanced can be Rs. 8 under the first part of clause (*a*) Sec. 23; it can be enhanced up to Rs. 6 under part second of the same section. It cannot be more than 8 rupees under clause [*b*] first

part and cannot be more than 5½ under clause (*b*) second part. It cannot be more than Rs. 4 under clause (*c*); or, in other words, no enhancement being possible, the landlord's right, as it exists at present, suffers to the extent of 1 rupee 5 annas, that is, by an amount which is fully equal to a third of his existing rent.

A, a Ryot pays 2 rupees 8 annas per bigah which produces 5 maunds valued at 5 rupees. The landlord expends money on earth-works (*gilandazi*) and the produce is increased to 10 maunds valued at 10 rupees. Under clause (*a*) the rent ought to be $2\frac{1}{2}+5=7\frac{1}{2}$ Rs. Under clause (*b*) first part it cannot be more than 5 rupees; under clause (*b*) second part it cannot be more than Rs. 5. Under clause (*c*) it cannot be more than 2 rupees 8 annas. In this case the landlord's existing right suffers to the extent of 2 Rs. 8 ans. or by an amount which is equal to the present rent.

A, a Ryot pays 2 rupees per bigah of land which produces 7½ maunds valued at 15 rupees. The price rises to rupees 18. The zemindar is entitled to 3½ Rs. under clause (*a*); under clause (*b*) first part it cannot be more than 4 Rs.; under clause (*b*) second part it cannot be more than 2 Rs. 6 ans; under clause (*c*) it cannot be more than 4 Rs. 8 ans. Here a nominal enhancement is possible. The twenty-five per cent limit under clause (*c*) which we have seen, destroyed the chance of enhancement in the two previous examples, is in the last case controlled by the rule of proportion and double limit. So one limitation or other will come in to control the *rule of proportion* when it leaves room for enhancement.

The effect of these limitations, is thus described by one of the dissentient members of the Rent Commission: "Following up the hypothesis which I have combated above, the Commission has suggested a provision to the effect that the enhanced rent of an occupancy ryot should not be more than one-fourth of the average annual value of the gross produce of the land. This dogmatic limitation of the zemindar's share of the produce is not only contradicted by the glaring fact that both in Bengal and Behar when rent is payable in kind, the zemindar's share of the produce is rarely less than 50 per cent, but it is also indefensible on the grounds of justice and even of expediency. In those tracts of the country where rent is at present considerably more than 25 per cent of the value of the produce this rule will stop enhancement of rent altogether. The argument that the landlords in those places already enjoy more profits than what they are fairly entitled to is at best specious. The profits of landlords are not necessarily large in districts in which the ratio of rent to produce is high, nor are they necessarily small where the ratio is low. It appears from the valuations of estates as determined by road-cess papers, that in Beerbhoom and Hooghly, where the ratio of rent to produce is considerably more than one-fourth, the revenue is more than 45 per cent of the valuation, while in Dacca and Chittagong, where the ratio of rent to produce is less than one-sixteenth, the revenue is less than 25 per cent of the valuation of estates. The result of the operation of the proposed rule will be that in some cases, as I have already said, it will stop enhancement altogether; in others it will raise the rent in various proportions; in others again it will lead to a decennial doubling of the rents, and in all it will disturb the relative profits which the landlord and the ryot have been hitherto deriving from the land."

Section 25 (1)

A, a Ryot was let into possession of a holding in 1870 under a written lease, which describes the holding as comprising 37 bigahs of land and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880, the land within these boundaries is measured and found to be 34 bigahs. This is the converse of illustration (*d*) of ground [2] section 22, and it is hard to understand why the converse case disentitling the Ryot to seek for abatement of rent, should not hold good in such a case.

Chapter IV.

The rights intended to be conferred on Ryots holding for 3 years and less than 12 years are new and are clear infringement of the Zemindary rights. Babu Mohiny Mohun Rai one of the native members of the Commission remarks: "Chapter IV. Sections 26 to 31.—Investing 3 years' Ryots with occupancy rights in a modified form. This is a flagrant change and requires no comment." The law at present is settled and clear that Ryots

not having rights of occupancy are to pay the rents demanded by their landlords or they are to quit the land. The rate of rent however is not settled by the caprice of the landlord, but by the rule of supply and demand, which regulates all contract rates. At least this has been the law for the last twenty years or more. Some members of the Rent Commission were of opinion that under the customs of the country a resident ryot once let into possession of Assamiwar lands, was entitled to retain possession of the said land so long as he continued to pay rent for the same; that the enactment of Act X of 1859, did not and could not destroy this custom, and that according to this custom, there should be an absolute interdiction to the landlord's right of re-entry in any case. The members who held this view would absolutely cut the period of occupancy right from 12 to 3 years and the proposals under Chapter IV are said to be the result of a compromise between extreme views on the subject. It is hard to understand what a compromise means in the present case. If under custom, Ryots had certain rights attached to them and these vague and uncertain rights had not been defined very favorably to the Ryots' claim in 1859 as some suppose, why go to define this custom by the fast rule of 3 years' occupation, and add to such custom in the bargain. Section 4 of the Bill saves all such customs and the Courts may well be left to take cognizance of such customary rights where they may be proved to exist. Why convert a customary right not known to have existed in all parts of the country and which ceased to exist in others by lapse of time, in to a statutory right for all Ryots? The Ryots of these days are not necessarily the descendants of Ryots who held land at the date of the Permanent Settlement. If they are they will be sufficiently protected in their rights by the provisions of Chapter II and III. That such a custom ever existed in Bengal or Behar, demands the clearest proof. On these points, the opinion of judges is of great weight and the present learned Chief Justice in his minute says: "By the Permanent Settlement zemindars were [subject to certain restrictions which are immaterial to our present purpose] left free by the Legislature to let their unoccupied land to Ryots upon whatever terms they thought proper. They had almost as much freedom in that respect as landlords have in England. The terms upon which they let the land were a matter of contract; and the principle of demand and supply [whether of Ryots or land] usually regulated these terms.

"Mr. Field expresses some doubt whether a Khudkast Ryot, as long as he paid his rent, could be turned out of his holding by his landlord. But however this may be it is certain that before the passing of the Rent law in 1859, a landlord could, and did almost at pleasure, rid himself of objectionable tenants.

"To obviate this apparent injustice, Act X of 1859 protected a Ryot, from eviction after twelve years of occupancy.

"Now however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landlord's rights as conferred upon him by the Permanent Settlement; and the only equitable ground upon which such an invasion could be justified would seem to be this, that if a Ryot had approved himself as a good tenant by cultivating his land and paying his rent satisfactorily for so long a period as twelve years, it was only fair to him, and no real injustice to the landlord, to continue him in his occupation, and prevent his being ejected without some sufficient reason."

That the provision of Sec. 6 of Act X of 1859, was a clear invasion of landlords' right is also to be seen from the minute of Sir Barnes Peacock dated 31 March 1864 wherein he says: "It appears to me that section 6 is objectionable and ought to be repealed, first because it interferes with the just rights of zemindars, at least in the permanently settled districts, by vesting rights of occupancy in Ryots, which had no previous existence."

This is the view which two learned judges have held with respect to the Ryots' rights and the provisions in Act X of 1859 regarding right of occupancy. If they thought a provision under which the Ryots' right to hold would come to be recognized after a continuous occupation of 12 years to be a direct invasion of the pemanent rights, by how much more would they not take this new provision of 3 years' occupancy to be a flagrant breach of the same.

That it was the object of the framers of

Act X to confer a special and defined right on Khudkast Ryots whose rights were previously undefined and who were liable to arbitrary eviction, also appears from the minute of Sir Frederick James Halliday, dated 27th November 1858 wherein he says: Perhaps the opportunity should be taken to define what has always needed definition viz, the term 'Khudkast and Kademi Ryots'. Mr. Sconce. Judge of the Sudder Court has suggested that instead of the terms used in sections 3 and 4 of the Bill, there should be substituted the words, 'ryots having a prescriptive right of occupancy' and he would fix twelve years as the term of uninterrupted occupancy, after which a ryot should come under the description he proposes. To this I would assent, believing that in doing so we shall be discharging a heavy obligation towards the Ryots long unfulfilled by our legislation. I would also use means to show that this was the definition of a 'Khudkast or Kademi Ryot' elsewhere alluded to in our Code." To use the words of Sir Frederick Halliday, *a heavy obligation to the Ryots, long unfulfilled by the Legislation,* was thus discharged by the enactment of Act X of 1859. The undefined rights of Khudkast and Kademi Ryots were ascertained and defined, and doubtless Act X of 1859, altered the law, as it then existed, to the great advantage of the Ryots. It is now proposed to cut the landlord's right of eviction from 12 to 3 years. The effect of this is that if the Ryot holds for 3 years, he will hold on for ever, for the Ryot in such a case can easily meet the landlord's demand of increased rent by claim for compensation for disturbance, and compensation for improvements true or false. In this respect his position will be sometimes better than that of an occupancy Ryot. If the landlord seeks to evict him on other grounds he will be equally met by a demand for compensation for improvements. Suppose there be a condition in the lease that the Ryot will be liable to eviction for altering the condition of the land, though there will be a decree in landlord's favor for eviction of the Ryot, for the breach of such condition, the decree nevertheless will be contingent on the landlord's payment to the Ryot of compensation for alterations made; or, in other words, the Ryot will be entitled to compensation for the very breach which will form the ground of his ouster.

Again, as has been pointed out by the dissentient member of the Rent Committee, Babu Peary Mohun Banerjea, rights of occupancy may not, even if it be declared saleable, find a ready purchaser, or the price fetched in the market by the sale of such rights, may not, for years to come, be more than one or two years' purchase, but the amount of compensation, will in most cases, be much more; and thus by a strange inconsistency in the law, a three years' holding, as between the landlord and tenant, will be more valuable than the 12 years' right of occupancy. As regards the claim for abatement of rent, the status of a three years' Ryot will come to be assimilated to the position of an occupancy holder. There may be hundreds of ways for improving the condition of the Ryots; but to make the landlords jealous of the rights of Ryots, is not the best way to improve it.

Section 26.

From the definition of the word 'Ryot' it is clear, that sections 16, 20 and 32 are subject to the provisions of section 11. Yet from the absence of the qualifying words "subject to the provisions of section 11" as used in section 19, from these sections it would seem that this is not so.

An Indigo planter holds a lease of Asamiwar lands for 5 years, with or without an express stipulation to relinquish at the end of the term; at the end of 3 years, he acquires a right to hold under this section and he cannot be evicted on the expiry of the term for his tenancy cannot be determined under Sec. 79.

Nor does the tenant's retaining the land at the end of the term, when there is an express stipulation to quit, come under clause (*b*) which probides for eviction as a penalty for the breach of a condition of the lease.

As the right under Sec. 26 is strictly personal and not heritable, there ought to be provision for the determination of such tenancy on the death of the tenant.

It would appear, from the omission of the Explanation (1) as given under section 19, that the holding of the father is not the holding of the son under this section. If this is so, it should be declared to be so; for in that case, no Ryot would think it worth his while to invest money in 'improvements' which he would know, might

lapse to the landlord, in case of his dying before the acquisition of a right of occupancy under Sec. 19.

Section 26.

What is the necessity for stating the *grounds* for an increased demand. The law does not provide for a suit for testing the sufficiency or otherwise of the grounds. The Ryot's course is either to consent to hold on the increased rent or to relinquish ; and the landlord must pay compensation for disturbance and compensation for 'improvements' in case of the Ryot's electing to relinquish, whether the grounds stated by him be sufficient or insufficient ; and how can a three years' Ryot sue for the determination of the amount of annual rent payable for such land under Sec. 151 when this is the case ?

Will not a three years' right of occupation be acquirable under conditions as given in Explanation 3 of Sec. 19 and not acquirable under conditions as given in Explanation 4 of the said section or is the 3 years' right acquirable irrespective of these conditions ? In the latter case, it would follow that a 3 years' right would be acquirable (1) by a tenant, who, when he was first let into possession of land by his landlord, contracted in writing with such landlord, that a right under this section should not be acquired in such land.

[2.] By a proprietor, Mokararidar, Istemrardar, Thikadar, or Ijaradar in a portion of land in which he has a proprietory, Mokarari, or Thikadari interest as against co-sharers, auction purchasers, or proprietors on the expiry of the term of the Ijara or Thika.

Section 26.

If a tenant is let into possession of more than 100 bigahs, without the specification of a term how can he be ejected by the landlord, so long as he continues to pay rent ? See also section 79 of the Bill.

Section 27. (*b*)

Would it not be absurd that even when the Zemindar, limits his claim for enhancement on grounds on which he could enhance the rent of an occupancy Ryot, it would still be in the option of the 3 years' Ryot to relinquish his lands and to obtain disturbance compensation and compensation for 'improvements' ?

Section 29, not being exhaustive leaves to the option of every Munsiff to say what is 'improvement' in each individual case. The determination of what is 'improvement' in each individual case and the amount of compensation to be awarded will lead to bitter and harassing litigation ; and if anything, Amladom has more to answer for the ills of Behar, than the defects of its land system if there are such.

Section 31.

Who is to decide as to the reasonableness of the Ryots' demand for abatement ? At times it may be advantageous for Ryots to relinquish by seeking abatement. A Ryot pays a Jumma of 200 rupees per annum for 50 bigahs in 25 of which he plants trees ; when the trees are fully grown it may be profitable for him to raise a capital by selling them in a lot ; and the most advantageous way to do it, will be to seek for abatement to the extent of say 150 rupees and in case of the landlord's refusal, to relinquish and receive compensation for the trees and 150 rupees in the bargain. Section 153 is entirely one-sided. The landlord, can only show under that section by way of answer to the Ryot's claim for abatement that such claim is improper ; but it does not provide for a suit by the landlord to determine the unreasonableness of such ground.

When the Ryot can sue for the abatement of rent and can ask for compensation for improvement, should not the contrary hold good as against them. There may be cases where a Bhowli Ryot allows his lands to lie fallow ; there may be cases where a Ryot turns a portion into a Jungle, or deteriorates its value by digging pits &c. What is the landlord's remedy in these cases ? The Behar Rent Commission recommended compensation in the case noted above regarding Bhowli ; but though cases of this kind are very common in Behar we find that their recommendation in this behalf has been over-ruled.

Section 35. (1)

Why are the grounds for the landlord's demand of higher rent to be stated when the Ryot is not entitled to question the unreasonableness or otherwise of such grounds ?

Section 35 (2)

This limit will injuriously affect Dearah settlements. A, a ryot holds 50 bigahs of sandy Dearah lands at a nominal rent say 4 ans. per bigah. The next year the land is covered with alluvial soil, and the rent that can be reasonably demanded

is 1 rupee per bigah; but under this rule it cannot be more than 8 ans. per bigah.

This limit of increase to double the former rent does not however apply to 3 years' Ryots; so that after 3 years, the increase demanded can be more than double; only in that case the Ryots will be entitled to relinquish and ask for compensation for disturbance. There does not appear to be much reason why the limit should exist in cases of tenants-at-will, when it would not exist in case of the 3 years' holders.

Chapter VI.

In Behar agricultural villages the home-stead lands are the raiyati lands of a village usually known as *Dih* lands which form but a small portion of the same. In this *Dih*, there may be a few bigahs of *Bhadoi* lands, but the whole extent including the habitable portion never exceeds 5 or 6 bigahs. The habitable portion consists of the houses of the cultivating Ryots and the houses of one or two artizans or shop-keepers. The cultivating Ryots pay no rent for their home-stead lands. Their houses in many cases are the property of the landlords, by whom they have been built, though they are repaired at the Ryots' expense and labor during the period of their occupation. The non-agriculturists pay a little ground-rent called *Mataharfa* oftentimes in kind, either by delivering a little quantity of the goods they sell, or performing some services for the landlord or his Amlahs. Thus the Teli pays a little but fixed quantity of oil as his *Mataharfa*, the Milkman, a little quantity of *Ghi* and *Dahi* and a fixed number of cow-dung cakes here used as fuel. Neither the agriculturists who pay no ground-rent nor the non-agriculturists, who pay only a nominal rent are ejected out of their home-steads which they occupy from generation to generation. The rest of the lands of a village are *Bahursi* usually low lands surrounding the habitable portion, which can never be converted into home-stead lands but at considerable expense.

Sometimes, but not very often, in larger villages called *kasbas*, agriculturists and non-agriculturists build substantial houses. In these *kasbas*, home-stead lands are in some demand, and fetch rent; but in all these cases lands are acquired under contract; and the men find no difficulty whatever in procuring sites for building houses with whatever title they may like to obtain in these lands. The provision of this chapter, will it is to be feared, affect the prevailing customs on the one hand, and the freedom of contract on the other.

Section 36 runs thus: "When land used or let to be used for agriculture &c., is held by any *such Ryot as is mentioned in Sec.* 16 *or in Sec.* 26, such Ryot shall not without the permission of the landlord of such land, use any portion there-of for building or any other purpose inconsistent with that for which it was used or let to be used as afore-said: *provided that a ryot may* without such permission erect upon such land a brick-built &c."

'*Such Ryot as is mentioned in Sec.* 16 *or in Sec.* 26.' Are not occupancy Ryots under Sec. 19 to have the privilege?

'*Provided that a Ryot may.*' Is a Ryot holding for less than 3 years entitled to do so? If not, the sentence should be 'provided that such a ryot.'

The right of 3 years' Ryot is not heritable; nor is there any provision that it will descend from father to son; is it even just to such a Ryot to give him the privilege?

Section 36.

In what portion of his holding is the ryot entitled to erect his brick-built house with out-offices and houses? A Ryot holds one bigah of land under one Zemindar and 90 bigahs under another Is he entitled to convert the whole of the former plot into a brick-built house if that plot suits his fancy better? An Ijaradar or Thikadar may not be entitled to build; but he may install in the estate, Ryots who may acquire a 3 years' right. In such case these latter will be entitled to do, what their superior holder, the former cannot do.

Section 38.

What is reasonable time under section 38? The matter should not be left entirely to the discretion of the Munsiffs.

'Such landlords *having applied* to the civil court under the provisions of the specific Relief Act, 1877, obtains a mandatory injunction.' The specific Relief Act does not provide for *applications*; but for suits on full stamp. In a large zemindary, where Ryots may take it into their head, to change the use of the land, nothing would suit them better than for them all to do so at one and the same time; thus

putting the landlord to the expense of so many suits under the specific Relief Act.

Sections 38 & 39.

The provision regarding injunction, compensation &c, will lead to a plentiful crop of litigation.

Section 41.

At present lands are let for building purpose on contract; the usual term in case of men of the status of ryots being that the tenant or his heirs shall not be liable to be ejected; but that they shall not be entitled to sell the building sites. Section 41, makes a reservation in favor of existing contracts in so far as they expressly stipulate against the growth of the right of occupancy; but it does not make any reservation in favor of contracts under which right of occupancy is granted, but its transferability is expressly denied. Such transferable rights are only granted on receipt of a heavy consideration in the shape of a *Nazarana or Salami* by the landlord. The provision in fact confiscates the landlord's existing right to such *Nazarana* or *Salami*.

The statutory right given to tenants under this section is entirely new, and unwarranted by the circumstances under which it may be expedient to amend the Law of Landlord and Tenant.

A *Zurpeshgi Thikadar* holds an estate for more than 12 years, retaining the zemindary cutchery and such parts of the *Bustee* lands as were not in the occupation of the Ryots, under his immediate possession. There is no express stipulation with respect to these lands. On the mortgagor's obtaining a decree for redemption of the *Zurpeshgi* mortgage, the Thikadar will be entitled to keep the decree-holder out of possession of all lands coming under the description of this section; and this whether he has built on them or not. N. B. The *Thika Zurpeshgi* combines the character both of a lease and a mortgage.

Section 41 is retrospective in its effect and will at once on the passing of the Act, give the *Zurpeshgi Thikadars*, a class of men, by no means small in this province, some of whom have been holding from a length of time, a statutory right to retain possession of lands described in this section; ten to one there will be found nothing in their *Zurpeshgi Pottahs*, providing against the accrual of such right which by the bye, is to be a *creation* of the new law, and whose creation could not in any case, have been foreseen or anticipated.

Section 42.

The maximum limit of enhancement fixed at 5 per cent of the market value of the land is too low. With reference to this Babu Mohiny Mohun says; "I object to the maximum rent beng fixed at 5 per cent of the market value, which I consider to be too low. Nine per cent, would, in my opinion, be fair. As to extending the *principle* of occupancy right to village lands not used for dwelling purposes, and to lands situated in towns (whether used for building or any other purpose) it seems to be entirely out of the question unless wholesale confiscation of private property is intended."

Chapter VII. *Section* 45.

The provisions of Sec. 45 effect an important change in the status of Ryots in estates which have escheated to Government. Immediately after escheat, these Ryots, will find to their cost, that though there-after they are *proprietors* paying Government Revenue, they have lost whatever rights they had acquired under the Law of Landlord and Tenant. Of course, the Section is not to be construed, so as to interfere with the operation of Act VIII (B. C.) of 1879 which defines and limits the powers of Settlement officers and also the operation of the Public Demands' Recovery Act. The question is whether they have or will come to have greater rights, greater protection under the existing Law of Landlord and Tenant, or greater rights and greater protection under the operation of those laws, which will stand unaffected after the passing of this section? A reference to the provisions of these Acts will convince any one, that the Ryots in Government estates under these Acts are placed absolutely at the mercy of the Executive. Of course, the Executive has no personal interest in enhancing rent or enforcing payment of such rent by coercive measures, and the Ryots in all cases can seek the protection of Government: but is it not a fact that rents in *Khas Mehal* estates are rising from year to year; and is it not a fact, that what in other cases would be called rack-rent, prevails in most cases in Government estates? It will be interesting to enquire, at what rate of rent the Gya

escheated estates have been settled; and how payment of rent in the case of those estates has been enforced since the time, the estates passed into the hands of Government, and how also and at what rate of rent, the settlement of several Government *Dearahs* (*Khas Mehals*) in Behar has been made? Of course it may not be either prudent or expedient to give to the zemindars, the same facilities for the collection and recovery of rent and for enhancement of the same which Government enjoys with reference to Ryots in *Khas Mehal* estates, but why should not the Ryots in these estates enjoy the same rights and privileges which the Ryots in their neighbourhood in estates under Zemindars enjoy? If again, it be true that Government in view of the refractoriness of ryots, had to guard its own interest, by changing the old laws on the subject, does it behove the legislature to offer a premium to a like growing spirit of refractoriness in Ryots of zemindary estates, by making them further concessions?

Chapter IX *Section* 55 (*b*)

These instalments shall hardly suit the *Bhowli* lands, where the division is made, or the estimated share of produce paid to the Zemindar immediately after the crops are reaped and gathered and in no case by instalments.

Now as it is proposed to abolish the landlord's power of distraint, should not the instalments be so timed as when the crops are yet in the field that the landlord may have some chance of recovering his rent, by an attachment after suit.

Sections 55 & 56

With reference to these provisions, Babu Peary Mohun Banerjea says: "The present law allows interest at the rate of 12 per cent on arrears of rent. The Draft Bill takes away the landlord's right to collect rent by monthly *kists*, and yet it makes the rate of interest in some measure discretionary with the courts."

Chapter IX. *Section* 58 (*c*)

The Bill provides that a tenant who entertains a *bonafide* doubt as to who is entitled to receive the rent, payable by him may deposit such rent in the Collectorate. The provision appears at first sight to be equitable but it will ultimately lead to endless complication. It makes the Ryot, the arbiter of all disputes regarding proprietory possession. One of the members of the Behar Rent Commission justly says on the subject: "It would be practically placing the landlords at the mercy of their Ryots. Some party, whether rightly or wrongly must be always in possession, and the Ryots are bound to pay him rent. By such payment they are also exonerated for all time to come, and the rightful claimants can only recover mesne profits from the party in possession to whom the Ryots have paid. A dispute as regards the zemindary title is thus never prejudicial to the Ryots' interest; it is sometimes advantageous to them. Greater indulgence is not required to be shown to them by the necessities of the case. It is positively mischievous with respect to the zemindars, for under this proposal, even in case of secure possession, the Ryots, specially those inimically inclined, or gained over by the zemindars' enemies, may trump out a dispute and cease to pay rent under the protection of law thus possibly bringing on a sale of the zemindars' property, and their ultimate ruin."

Section 64.

When one of the several co-parceners in an estate, has sued under the provisions of the Exceptions to Sec. 69, and obtained a decree for his separate portion of rents of a tenure or occupancy holding, there will be nothing to prevent him to bring to sale such tenure or occupancy holding under Sec. 64; in fact he will be bound to do so before resorting to any other process. If rent decrees be subsequently obtained by other co-parceners for the same tenure or holding and for the same period, how are these decree holders to proceed; will there be successive sales of the same holding at the instance of every decree holder landlord? Sec. 211 ought at least to provide for the satisfaction of such rent claims if there be any, out of the sale-proceeds.

In cases of saleable tenures and under-tenures, the present law provides only that processes against other immoveable property of the judgment-debtor shall not be issued in execution of decree, before the sale of such tenure of under-tenure. The Draft Bill proposes to change the law on the subject; and in cases of occupancy holdings which may not find a purchaser in the market, the effect would simply be to deprive the landlord of his dues decreed even when the Ryot has a valuable crop on

the field. For by the time, the holding can be brought to sale, the Ryot will be enabled to reap and gather such crop, which the landlord is not entitled to touch, and which the Ryot is at liberty to dispose of, in the best way he can. True, he can do this only once, but unless the landlord was to be the purchaser himself of such occupancy holding under Sec. 207, there would be an equal probability of his faring alike with a successive set of tenants, specially when the landlord is not entitled to demand any security from the purchasers of such holdings.

And here it may not be uninteresting to compare the advantages of an occupancy holding as the Draft Bill proposes to make it with those of a Putney and similar other tenure. First, both are heritable, devisable and transferable ; but in the case of the transfer of a Putney, the landlord will be entitled to demand substantial security from the transferee ; not so, in the case of the transfers of occupancy holdings.

Secondly. Occupancy holdings with all these incidents attached, will be a statutory *creation*, the landlord receiving nothing for the accrual of such rights in tenants ; whereas in cases of Putney grants, the landlord receives a substantial *Salami*, as the consideration of such grant, such *Salami* at times coming up to the amount of full twenty years' purchase.

Thirdly. In cases of arrears of rent, the landlord's remedy in the first place, is by sale of the tenure or the occupancy holding; but in cases of Putney, the landlord will be entitled to bring it to sale twice in a year in a summary way ; in the case of occupancy holdings, he will have to go first through the tedious and expensive process of a rent suit. In the one case, the landlord will have a substantial Putney right to sell; in the other case, the right which the landlord can bring to auction may not find a purchaser.

Fourthly. In all cases, the Putney is sold free of all 'incumbrances'; occupancy holdings will be sold free of incumbrances only on special application and under special circumstances. (Vide Secs. 206 & 207.)

Fifthly. And in the above circumstance the landlord, has an additional guarantee for the prompt discharge of his rent dues, by the holders under the Putneydar. This guarantee will be wanting in cases of occupancy holdings.

The only advantage (an insignificant one after the various limitations imposed on the landlord's power of enhancement) which the landlord will have in the case of occupancy holdings being, that in this case he will have some prospect of increased rent after each 10 years.

When the co-parceners of a joint estate, have by agreement with other co-parceners and tenants or otherwise, been in separate receipt of rents from the Ryots, the internal zemindary management of the estate, so far as the collections of rent are concerned must be considered as separate. Section 65 does not provide for such a case.

Chapter X. *Section* 65.

'*When co-parceners, who jointly own an estate, tenure or under-tenure &c.*'

Babu Mohiny Mohun says with reference to this section : "Persons out of possession having claims to a share in property, will largely resort to these provisions for the purpose of obtaining a recognition in some shape, of their claims or of harassing their adversaries." The section, if it is to be retained, should at least be so worded as to prevent this.

Babu Peary Mohun says : "The necessity for investing the District Courts with the power of appointing a Manager for the management of an estate or tenure held by two or more co-parceners, when even a single ryot, or the owner of an infinitesimal share, chooses to apply for such an appointment, has not been made out. The decision recently passed by a Full Bench of the High Court, recognizing the power of every co-parcener to have his share of the rent apportioned by a suit in court, will remove all sources of annoyances to the Ryots of joint estates and tenures, and of disputes among the co-parceners themselves. The proposal for the appointment of Managers by court is therefore uncalled for. A similar proposition started at the time of Sir George Campbell was looked upon with disfavor by the executive and judicial officers who were consulted about it, and it was abandoned after a thorough discussion of its merits and demerits. It is certainly not desirable that the mediæval passion for superceding the independent conduct of every man's affair by officious legislation in matters relating to land should not be revived." It is to be feared that in districts, where the judges

may like to exercise a little patronage by appointing Managers, the management of estates will in most cases in such districts, pass out of the hands of their lawful owners.

Sections 65, 66 & 67.

The effect of these provisions will be to reduce the real owners to the position of mere annuitants upon their estates. The managers cannot have that interest in the management and improvement of the estates which those personally interested can have; and as it is very essential to the agricultural prospects of this province, specially in estates where *Bhowli* tenure abounds, and where it is necessary at seasons for landlords to advance money out of their pockets to the ryots for the successful prosecution of agricultural industry, that such personal interest should be taken, it is to be feared that agriculture would suffer. Nor is it very likely that the Managers appointed by the district courts are likely to prove better men than the zemindary village Amlahs; the salary which could be given, is not likely to tempt a first class set of men; and the men that would ordinarily be appointed as managers, carrying with them, the authority of the district courts, will, when venal, be not satisfied with the paltry douceurs now received by the village Patwaries from the Ryots. There will again be no check to their corruption and rapacity on the spot, as they will be placed above the control of the landlords, and will be only removable by the order of the district courts.

It is usual that when an estate is managed for the real owners, by Government servants, no sale for arrears of Government revenue takes place. Will not the principle of this practice be applicable in this case also.

Chapter X *Section* 69, *Exceptions* (1) & (2).

When rent decrees have been obtained by co-parceners for their separate share of rent in cases coming under Exceptions (1) and (2) of Sec. 69 Chapter X, will the provisions of Sec. 64 regarding the sale of such tenure, under-tenure or holding in the first instance, be applicable? If so, the law ought to provide for the protection of the interest of the other co-parceners.

Section. 73

Under Sec. 73 landlords are bound to put and maintain tenant in possession. The Section provides "that this duty extends only to interruption or disturbance by the landlord or any one *claiming under* or *paramount to him.*" A landlord lets out his estate in *Thika*; if the relation of landlord and tenant can be said to subsist between him and the Ryots after the date of the *Thika*, it does not appear, how the landlord, on whom a legal obligation is thrown under this section to maintain the tenant in possession, can intervene between the Thikadar and the tenant to protect the latter from forcible dispossession, by the former. It may be that the landlord, can do so, in certain cases, when he is empowered to do so, by the cancelment of the *Thika* lease; but when he has not reserved this power or where the *Thika* has been given by receiving an advance, the landlord will be unable to do so. The case will be still worse, when the person dispossessing the Ryot is a tenure or an under-tenure holder with permanent right under the Zemindar. The law does not arm the Zemindar with any power under which he could intervene for the protection of the tenant. If the obligation under this head, carries with its breach as a consequence, the inability to recover rent from the dispossessed tenant, it means nothing in a case where the landlord has parted with his right to recover such rent to a Thikadar or tenure-holder; but if it carries with it other consequences, as liability to pay damages &c, the law imposes upon the land-lord an obligation which it will not be in the power of the landlord to fulfil when the person dispossessing the Ryot is any one else than the zemindar himself.

Does the word 'lease' in sections 71 and 74, include Ryoti lease, and could a person having a limited interest in land, grant a right of occupancy lease to a Ryot?

It would seem from explanation 2 of Sec. 19, and the spirit of Sec. 74, as if a right of occupancy cannot be acquired by holding under a person with a life interest in an estate.

Section 77. (*a*)

It would appear by reading this section along with Sec. 36, that a tenure or an under-tenure holder is not to be entitled to build a dwelling house, within a portion of land forming his tenure or under-

tenure, if he has not obtained the landlord's permission to do so; or if such lands which form his tenure or under-tenure has not been customarily used for building purposes. Is their any reason why this right should be denied to him, when such right is granted even to three year's Ryots?

Section 77 (*b*)

A Ryot plants trees in his *Bhowli* holding and delivers to the landlord as rent, a portion of the produce. Is the Ryot to have the right to cut down and appropriate trees under this clause with respect to such trees? It will be difficult to determine in many cases by whom the trees have been planted. In Behar, the palm and other fruit trees though situate in a Ryot's holding belong exclusively to the Zemindar.

Section 79 (4)

By having to wait for a year after the date of abandonment before the tenancy can be determined and settlement made with other Ryots, the landlord loses his rents for the year. A decree in such a case will be a mere paper decree; but in cases of *Bhowli*, perhaps even this paper decree will not be obtainable.

Section 79 (9)

This section and every other by which a shorter period of limitation is fixed should not have a retrospective effect. A period at least should be fixed within which suits in which causes of action have accrued priviously, and in which a longer period of limitation is allowed under the present law to sue, may be brought after the passing of the Act.

Chapter XII.

The system of Ryoti tenures in Behar is very simple and well suited to the peculiar circumstance of this province, 'where a large portion of the land is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than good ones. The ryots having no capital, and being an improvident race would be ruined by one or two bad seasons, if they had to pay fixed money rents.' There is again the method of storing rain water and its economical use by means of *Ahars* (reservoirs) *Alangs* (embankments), *Pynes* (water-channels), and Bunds which are peculiar to Behar. Some crops are raised entirely by means of artificial irrigation. It is essential therefore that the landlord who alone has the means and power to keep a proper supply of water for the village cultivation, should have a joint interest with the Ryot in the improvement of the soil. The Ryoti tenures * which are peculiar to this province seem to have originated in this circumstance.

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* Ryoti tenures in Behar are classified on various principles. One classification is made with reference to the length of the ryoti holding; another with reference to the incident of the place of residence of the ryots and a third with reference to the mode of payment of rent. Under the last method all ryoti holdings are divided into two classes, *viz*, *Nukdi* and *Bhowli*. When the payment of rent is made in cash, the tenure is called *Nukdi* (from *Nukd* cash). When the payment is made in kind the tenure is called *Bhowli* (probably a Hindi compound made up of *Bhow*, rate price, and *wali*, pertaining to). The *Nukdi* tenures are of several classes known by distinct name; the most important of them being *Nukdi* proper, *Balkut* and *Hastbood*. The tenure is called *Nakdi* proper or *Chikkut* when the cash rent fixed previously is paid for every bigah of the holding without any regard to the produce. The *Balkut* (from *Bal*, ears of corn, and *katna*, to cut) is the kind of tenure where the rate of cash rent per bigah is determined on an inspection of the actual produce of the fields, and this rate charged for every bigah of the ryots holding. The *Hastbood* is the kind of tenure when the rate of rent is fixed previously; but the ryots are liable to pay rent at that rate for those plots of land only where the harvests grow. Thus if a ryot holds twenty bigahs of land, and the tenure is *Nukdi* the amount of rent, the rate of which must in this case have been fixed previously, say rupees five per bigah, would be one hundred rupees; but if the ryot held the same quantity of land in *Balkut* tenure, the rate of rent would be determined only after an inspection of the actual produce of any one harvest, and supposihg the rate then to be determined at Rs. 6 per bigah in one year the amount of rent would be Rs. 120, and supposing the rate to be determined at Rs. 4 the next year, the amount would be Rs. 80. And if the rate of rent be at five rupees per bigah, and *Khariff* has grown in 8 out of 20 bigahs, and *Rabbi* in 5 out of 20, the amount of rent payable, in case the tenure is *Hastboodh* would be Rs. 65, and if in another year, *Khdriff* grows in 12 bigahs and *Rabbi* in 13 the amount of rent payable is Rs. 120, and this irrespective of the amount of produce. There is another kind of *Hostbood* tenure which is peculiar to certain pergunnas, and in this there is a combination of the two kinds of payment. Thus a *Nukdi* rental is previously agreed on, and it is understood that a certain percentage of the ryots holding is to be held in *Nukdi*, and the remainder in *Bhowli Agorbatai*. The Ryot has in this case the righ

It may be that the nature of these tenures makes the Ryot a little too dependent on the good will of the landlord, but the landlord also is dependent in a great measure on the honest exertions of the ryot for the security of his rents. The interest of both are bound up together by the circumstances of the case and the nature of the tenures, and there does not appear to be anything intrinsically wrong in the system. The peculiar advantages which recommend it to the people of this province have to be only set off against any fancied evils, and it will be readily seen that customs which have originated in the necessities of the people, and which have prevailed from generation to generation, should not be hastily condemned or done away with 'by a stroke of the pen.'

The Commissioner of Patna writing to the Secretary to the Board of Revenue on the 21st August 1858 said :

"It may very probably be thought by those who have had no experience in this part of the country that payment in kind or the mixed payments which form the peculiarity of the *Bhowli* tenures, should be discouraged as much as possible and should not be sanctioned by the Legislature, but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than goor ones. The ryots having no capital and being and improvident race would be ruined by one or two bad seasons, if they had to pay fixed money rents. Under a *Bhowli* or *Batai* system on the contrary where the rent is proportioned to the, produce, they can always rub on, and if they have not much opportunity of making money, they are tolerably secure from ruin. These tenures are therefore very popular, and when the landlord is a just man are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent."

Nor are these the only advantages that arise from the peculiar nature of the Behar tenures. Enhancement suits and disputes arising out of the landlord's power of distraint are not much known here. Sir John Shore writing in 1789 regarding the Behar tenures says;—(minute page 21). "The great point required is to determine what is, and what is not oppression, that justice may be impartially administered according to fixed rules in Behar. The variations in the demands upon the ryots are not so great as in Bengal ; the system of dividing the produce affords a clear and definite rule wherever that prevails, and Regulations need not be so minute as those which I proposed for Bengal."

Another advantage arising out of the

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to select the best lands called *Joiet* (best) for the *Nukdi* payment.

The Bhowli tenure is of two kinds [1] *Agorbatai*, (2) *Danabandi*. *Agorbatai* [from *Agora*, watching, and *Bantna*, dividing] is that kind of Bhowli tenure where a division of the crops is made in predetermined proportions between the landlord and the tenant. When the crops are yet in the field and ready for reaping the landlord appoints *Agroras* [watchmen] to watch that none of the crops are fraudulently made away with. When ripe, the crops are gathered in the *khaliang* (threshing floors] which are places usually set apart for this purpose near the *Basti*. The charge of reaping, [one out of twenty one bundles gathered] is paid out of the entire produce, and the remainder then, after threshing and cleansing, is divided in predetermined proportions between the landlord and the tenant. The usual proportion is half and half ; or 9 ans. to the landlord and 7 ans, to the tenant out of the 16 ans produce. The *Danabandi* literally means a cursory survey or a partial measurement of field, or weighment of the crop, to ascertain the value of the crop and the amount of assessment. These proceedings which are antecedent to the final determination of the landlord's portion, give the name to the tenure itself. The *Danabandi* is made when the crops are yet standing in the fields and when they are almost ripe for cutting. A party consisting of a *Salis*[arbitrator] an Amin [appraiser]attended by the Patwari, Goomashta and other village Amlas, go about in each field and appraise the produce in maunds. At first the *Salis* makes the estimate but if the ryot is dissatisfied with the estimate, the *Amin* is referred to. The estimate having been once made, everything is left to the ryot himself; the landlord or his Amla has then nothing to do with the standing crops. They are reaped and gathered by the ryot who may pay the zemindary portion of the estimated produce either in kind, or the price of this according to the price current, in cash. The Zemindar's share is usually either half or 9 ans. out of the 16 ans. of the produce. The *Battaja dana* is merely a modification of the last mentioned method, the difference being that under this system the *Salis* and the *Amin* do not go to the field to appraise the out-turn but the landlord's Amla and the ryot come to an understanding about this at a sitting in the Zemindar's Cutchery.

nature of these tenures which give a joint interest to the landlord and the ryot in the produce of the soil, is the freedom of this province from that system of sub-infeudation which prevails to such a large and mischievous extent in Bengal, and under which the Zamindar is a mere annuitant upon his land, the profit being divided among a number of middlemen.

There is therefore nothing in the nature of these tenures which could in any way connect them with the alleged poor and depressed condition of the peasantry of this province as cause and effect. The question remains whether under these tenures the ryots are rack-rented? It is said that in cases where under the *Bhowli* tenure, the landlord leaving all risks to the cultivator receives more than half the gross produce, his profit is *obviously inordinate*. The conclusion here is based on a wrong premise as to all risks being left to cultivators in *Bhowli* tenures as will be shown in a subsequent portion of this note; but allowing the premise to be right, the Committee feel sure that those who are acquainted with the peculiar circumstance of the case, will never pronounce the proportion to be in any way inordinate. In *Bhowli* as well as in *Nukdi* tenure it is not probable that each bigah of land shall yield its produce every harvest. But whereas under the *Nukdi* system each bigah must pay its quota of rent every year, in *Bhowli* the landlord's share is of the actual out-turn of the lands which yield a crop. The nine-anna proportion, therefore, if distributed as rent over the entire quantity of ryots holding—lands which yield and lands which yield not,—will instead of being obviously inordinate, be *obviously low*. This will appear by reference to actual figures. *Bhowli* tenures prevail to a large extent in Gya. In that district the total Road cess in 1877-78 was Rs 108,830. This represents a total district rental of Rs. 3,482,560. Compare this with the case of the following districts by far the most advanced districts in Bengal viz; Nuddea, Jessore, Moorshedabad, Dacca, Faridpore, Bakergunge and Mymensingh. In Nuddea the amount of Road cess was Rs. 102,492 representing a total rental of Rs. 3,279,744. In Jessore, Moorshedabad, Dacca, Faridpore, Bakergunge and Mymensingh the amounts of Road cess are 107158,84639, 74495, 55115,159574, & 156978 rupees respectively, which represent in these respective cases total rentals of 3428960.2708448, 2283840,1763680,5106368,&6023296 rupees The Statistical Reporters of the district of Gya will show that the cultivated area in Gya comes up nearly to the total area of the district; for the purposes of a rough calculation therefore, we will divide these total amounts of district rentals by the total area of these districts. The following table gives the result showing that the average rent per square mile in Gya, is lower than in the 7 districts of Bengal named above:—

District. 1	Amount of Road cess. 2	Total district rental. 3	Total district area. 4	Rental per square mile. 5
	Rs	Rs	Square miles.	Rs
Gya	108830	3482560	4716	738 nearly
Nuddea	102492	3279744	3421	958 ,,
Jessore	107155	3428960	3658	937 ,,
Moorshidabad	84639	2708448	2642	1100 ,,
Dacca	74495	2283840	2796	820 ,,
Faridpur	55115	1763680	2249	784 ,,
Bakergunge	159574	5106368	3648	1399 ,,
Mymensingh	156978	6023296	6299	956 ,,

The figures in column 2&4 are taken from the Administration Report of 1877-78.

It is noteworthy also that this proportion is gradually being adjusted to the changed circumstances of the times. In Sarun where the tenants paid rents in kind, the Zamindars at the time of the Permanent Settlement bound themselves not to take more than 1 maund 22½ seers from a maximum estimated produce of 2 maunds per bigah. (Vide Statistical Reporter Vol XI p. 301.) The present custom where

payment in kind exists, is for the produce to be divided equally, and if there be no violence done to it by legislative action, there is reason to suppose that further modifications in favor of the ryot may not improbably take place. It has to be borne in mind that in the face of a growing demand for land to meet the requirements of an ever-growing population, these changes indicate an amount of good will of the Behar Zemindars towards their royts for which they usually receive no credit.

The following table showing the average rate of money rent per standard bigah has been called from the Statiscal Reporters.

District.	Average rate of rent per bigah.		
	Rs.	Ans.	P.
Patna.....	1	6	8
Gya.....	,,	11	6
Shahabad.....	1	,,	8
Durbhunga.....	1	2	,,
Mozufferpore...	1	8	2
Sarun.....	1	7	1
Champarun.....	,,	14	6
Nuddea.....	,,	15	,,
Jessore.....	,,	14	10
Moorshedabad...	1	,,	7
Dacca.....	,,	14	5
Furidpore.....	,,	12	,,
Bakergunge.....	1	6	5
Mymensingh...	,,	15	,,

The above table shows the average *Nukdi* rent per bigah in some of the important districts of Bengal and Behar. If the result appears to be more favorable to the Bengal ryots than to the ryots of Behar, the reason is not far to seek; it is only the best lands in Behar that are held in *Nukdi*, the inferior class being oftener held under *Bhaoli* tenure. These *Nukdi* lands of Behar never yield less than two crops, whereas a cultivator in Bengal scarcely raises more than one crop from his land. It will perhaps be asked why then are the actual cultivators of this province poor and poverty-stricken, and why every famine brings them to the point of starvation? No statistics, so far as the Committee are aware, are available to show whether the actual cultivators of this province had to seek gratuitous relief, or to engage themselves as day-labourers on Relief works, during the famine of 1873. During the worst months of the famine year *i. e.* July and August, some of them had to seek for grain advances, which they contracted to pay back by yearly instalments and that is all the measure of relief they required and received. (Vide Sir Richard Temple's Famine Minute). But it must be remembered that the famine of 1873 was exceptional in its character. It had been preceded by years of bad harvest.

It was the great landless class that received most of the State Relief, and it is this class which, compared with the corresponding class in Bengal is really poverty-stricken. Neither the zemindar nor the system of land tenure has, however, anything to answer for in this matter. But the mistake is too often made that in describing the actual condition of Behar, whether in official reports or sensational pamphlets, the distinction between this class and the actual cultivators is often lost sight of. On examination it will be found that there has been a greater up-heaval of the masses in Behar than in Bengal, simply owing to their connection with land. Fifteen-sixteenths of the cultivating classes in Behar are drawn from the castes of Kurmis, Koeris, Ahirs (Goalas), Rajputs and Babhuns. Kurmis and Koeris are exclusively a cultivating class. It is well-known that these castes depend for their livelihood on owning or holding land as cultivators or owners. Only a few of them in towns serve as gardeners, but even there, they hold some lands as cultivators on their own account and regard service as supplemental and subsidiary. There is no doubt that the class is daily prospering, as it should, for there is hardly another class of industrious peasants to be found like it in the rest of India. Several of these peasants have now risen from the position of mere cultivators to that of owners or farmers of land, and it is they who are the money-lenders in their villages. The Ahirs [Goalus] who form fully a sixth of the population of this province are, besides their caste occupation of tending cows and buffaloes, in many cases cultivators. There are many persons of this class who are owners of estates or prosperous farmers. The mere cultivators are not at all badly off, and though not as industrious as Koeris and Kurmis, they make out a good livelihood by supplementing the produce of their fields, by what they get by tending their cows and buffaloes. As a rule they are addicted to strong drink and it is on this account that they are found, though in very few cases to be in

poverty. The Babhuns and Rajputs are owners and farmers of estates and are also cultivators. They never cultivate with their own hands, but have their cultivation done by hired servants. As cultivators they are the veriable terrors their landlords and it is doubtful whether there is a corresponding class of prosperous middlemen in Bengal like these Babhun and Rajput cultivators of Behar. To us it appears to be a gratuitous assumption to hold that the ryots of Behar are worse off than the people of their class in other parts of India or that they are weaker than their landlords. * If they are at times found to be in debt, the reason must be sought for to a great extent, in that great stimulant of Hindoo extravagance—marriage expenditure.

That the above is the plain truth is also clear from the fact, that the condition of these ryots, far from deteriorating, as it would do, if their were anything intrinsically wrong in the system of land tenures, is gradually improving year by year.

The present situation is thus described by the district officers of Behar; the Committee quote from the Resolution of Government on the Administration Report of the Patna Division for the last year. Mr. Metcalfe, writing of the Patna district thinks "that the position of the better class of agriculturists was favorable; prices were fair; trade brisk; rents easily paid; and cattle dear. This class is learning to have more confidence in its strength, and to resist undue or illegal demands on the part of the Zemindars. Among the lower classes of peasants and the agricultural labourers, there was no material improvement, except so far that a good harvest, and plenty of work placed them temporarily beyond the reach of want, and gave them larger means of indulging in country liquor." The last portion of this statement touching the condition of the lower classes of of peasants, throws some glimpse on the real cause or causes why a wide-spread misery over-takes these classes of people in every year of bad harvest;—their want of economical habits in years that are good.

With reference to Gya, we have that "the agriculturists have benefitted by good crops and a brisk export trade in grain. But the *Bhowli* system is said to press heavily on the cultivators, preventing any thing like permanent improvement. There has been a good and growing demand for labour which has helped the poorest classes during the past year." The poorest classes in Behar, thus are not the agricultural classes, but the great *landless* class, and evidently the alleged proverbial poverty of Behar is to be attributable to other causes than to the defects of the land tenures. † As for *Bhowli* tenure pressing heavily on the culivators, and preventing anything like permanent improvement, the Committee having already shown how the facts stand, beg to submit with due deference, that this is one of those prejudices against things which are not English, from which unfortunately, very few of our statesmen are free. To those who are for abolishing the *Bhowli* tenure by 'a stroke of the pen' the Committee beg to say in the words of Mr. Mill that "the Metayer tenure is not one which we should be anxious to introduce where the exigencies of society had not naturally given birth to it; but neither ought we to be eager to abolish it on a mere *a priori* view of its disadvantages." ‡ The Committee show elsewhere in their note, how in several respects the *Bhowli* tenants of Behar enjoy greater privileges than the Metayer tenants in

* It may be interesting to those who are under the impression that the Ryot in Behar is the weaker and the landlord the stronger party, to know, that here the germs of a *land-league*, with the best of organizations, already exist in the panchaits; a Koiri or Kurmi would be visited by his Panchait with the severest social punishments if he were to take a settlement from the landlord of lands out of which a brother Koiri or Kurmi has been ejected.

* The district of Patna pays a greater amount of excise revenue, than any of the other districts under the Lieutenant-Governor of Bengal. With a population of 1,559,538 the district of Patna pays an excise revenue of Rs. 477,913, whereas Nuddia, with a population of 1,812,795 pays an excise revenue of Rs. 115,815 only; and the districts of Jessore, Murshedabad, Dacca, Fureedpore, Backergunge and Mymensingh, with populations of 2,075,021; 1,349,660; 1,870,256; 1,502,436; 1,887,586; &2,349,917 pay an excise revenue of Rs. 83,669; Rs. 166,281; Rs. 161,295; Rs. 42,312; 73,512; and Rs. 224,607 respectively. The other districts of Behar pay a comparatively greater amount of excise revenue than the districts of Bengal. These figures are taken from the Administration Report of 1878-79.

† The great populousness of the Behor districts and the low rate of wages account in a great measure for the poverty of the great landless class.

‡ (Mill—Political Economy Vol. I. p. 388.

continental Europe, and how (notwithstanding English prejudices on the subject,) the European Metayer tenancy has been pronounced as one of the best tenancies by those who are well acquainted with the subject.

Of Shahabad, Mr. Edgar writes :—"The material condition of the people in Shahabad is gradually improving owing to the canals, rise of prices, and improved communications. Last year a good harvest added to the causes enumerated above, led to an improvement of the condition of the people. The decrease in crime and increase in drinking are unerring measures of the prosperous condition of the people. In illustration of the prosperity of the agricultural classes in Shahabad, I would note that the cane cultivators in the district have, with a view to introduce an improved method for the manufacture of molasses bought 9,000 of the Beheea Mill patented by Messrs Thomson, Mylne, and Co., at an outlay of Rs.6,30,000. This is the result of the impetus which the canal irrigation has given to the cultivation of the sugar-cane. Before the opening of the canals the area under cane cultivation was only 1,804 acres, whereas it has now increased to 22,000 acres, or nearly twelve times the area previously cultivated. This increased cultivation of sugar-cane has added considerably to the agricultural wealth of the district the increase of profit derived from this source being estimated at no less than Rs. 473,000 per annum." And yet the same system of land tenures prevails in Shahabad, as in the rest of Behar and though Shahabad peasantry admittedly enjoy this exceptional amount of prosperity, the several changes proposed by the Rent Law will apply to them as to the rest of the peasantry in Behar.

In Tirhut Mr. Worseley admits a temporary improvement, but remarks that "under the existing conditions of agriculture, rent and population no permanent improvement of the condition of the agricultural classes can be looked for. At the same time it appears, that both here and in Durbhanga many ryots are now fairly well-to-do." These many ryots found *fairly well*-to-do, live under the same system of land tenures as the rest of their fellow-peasants, and the Committee beg to repeat what they have observed in this note elsewhere that the customary rent under *Bhowli* tenure which prevails to a great extent in Tirhut as in the rest of the districts of Behar has always remained unaffected to the Ryots' disadvantage by the ever-growing increase of population. This is its peculiar advantage, and ought to be taken into serious consideration by those who would abrogate the custom and commute *Bhowli* into a *Nukdi* tenure.

Mr. McDonell's observations regarding Sarun are as follow :—

"Before I came to Sarun, I was aware that it was the most densely populated district in Behar, and the most highly cultivated. My information also was to the effect that the material condition of the people was low, and the mental impression thus created was strengthened by what I had read in the Government Review of last year's Administration Report, and by the note on this head which my predecessor recorded for my information. The note was very expressive. 'The natural condition of the people' said Mr. Pawsey 'has been as bad as could be, short of actual starvation!' I was therefore prepared to find in Sarun, even greater poverty than I had found in North Behar.

"The metayer system has met with no mercy from English authorities. 'There is not one word to be said in favor of the practice' says Arthur young 'and a thousand arguments that might be used against it.' 'Wherever it (the metayer system) has been adopted' says Mr. M'Culloch 'it has put a stop to all improvement, and has reduced the cultivators to the most abject poverty.' Mr. Jones shares the common opinion &c." (Mill's Political Economy Vol. I. p. 376.)

Then after quoting the testimony of M. De Sismondi and other continental writers as to the advantages of a metayer system, Mr. Mill says : "I do not offer these quotations as evidence of the intrinsic excellence of the metayer system ; but they surely suffice to prove that neither 'land miserably cultivated' nor a people in 'the most abject poverty' have any necessary connection with it, and that the unmeasured vituperation lavished upon the system by English writers, is grounded on an extremely narrow view of the subject." (Mill's Political Economy Vol. I. p. 338). The impression of the English writers seems to be chiefly derived from France and France before the Revolution. In France under the old *regime*, the exemption of the noblesse from direct taxation had led the Government to throw the whole burthen of their over-increasing fiscal exactions upon the occupiers ; and it is to these exactions that Turgot ascribed the extreme wretchedness of the metayers. (Vide Ditto p. 377).

"I have had a good deal of experience in the way of enquiries into the condition of the people in this province. In the course of such enquiries I have at one time or another travelled over all North Behar, Chumparun excepted. Since I joined this appointment I have seen every thing Sarun has to show in the way of varying conditions of social and economic life. The result is this: My first visit to the interior produced on my mind the impression that compared with his fellow subjects across the Gunduck and Ganges, the Sarufi Ryot was a well-to-do man, and every day that has passed since has brought to notice something or other confirmative of that first impression."

Mr. McDonell is one of those able and experienced district officers of Behar, whose opinion always commands respect, and whoever the officials may be who are, in Mr. Mackenzie's remarks p 110 Report Vol. I, said to be 'glad to do them (the Zemindars) favors, and (to) find it pleasant to be on friendly relations with them', Mr. McDonell is not surely one of those officials. For the rest, Mr. McDonell's statement while exposing the great danger of prejudices and hasty generalizations ought to convince the legislature, how its action [actuated by the best of motives] may prove mischievous if not based upon a thorough examination of 'the varying conditions of social and economic life'.

In Chumparun there is a decided increase of cultivation and a brisk export trade, which is improving the position of the cultivators.

The Officiating Commissioner, Mr. Edgar in summing up the district Reports thus states his general conclusions:

"I have made unusually full quotations from the district and sub-divisional Reports because they seem to me to show, in spite of considerable variations of opinion, that the keenest and closest observers discern a decided improvement in the condition of the people, and this coincides with the result of my own observations. Of course, in dealing with so large and complex a subject as this, there is great danger of making untrustworthy generalizations from insufficient data, and the difference so often found in the condition of tracts neighbouring to one another warns us of the folly of making sweeping statements to cover all the facts of an area so great and so varied as that of Behar. Still while keeping these considerations full in view, I can state with some confidence that, all the available evidence seems to point to a steady improvement in the material condition of the people throughout the division. In some places this improvement may be scarcely appreciable, and in most places it may be slow; but in others again it is well marked and comparatively rapid. I would ascribe this mainly to the improvement of communications, and to the consequent rise of the price of agricultural produce; but I think it is also in some measure due to a gradual, but very real, awakening of intelligence among all classes of the people."

In reviewing the Report, the Government Resolution states: "The Lieutenant-Governor trusts that there are really symptoms of some amelioration in the state of things in Behar, though it may be long ere the condition of the province becomes thoroughly satisfactory. Forces are, however, undoubtedly at work that must in time bring about a decided change. Education, trade, Railways, and canals, are all producing their natural effect; and they will do this the more readily if the Government finds itself able to remove in some degree the obstacles which now lie in the way of the progress, enlightenment, and material comfort of the peasantry."

Nowhere is it more true than in Behar, where the *Bhowli* tenure, originating, as has been shown, in the exceptional circumstance of the province prevails to such a large extent, that the interest of the landlord and tenant is identical; and nowhere else in Bengal, will the Government find the enlightened portion of the Zemindars more willing to co-operate with Government, in removing the obstacles which lie in the way of the progress, enlightenment and material comfort of the peasantry; for next to the sense of this identity of interest, it is the characteristic of the Zemindars here to court always the good opinion of the authorities. Already some advances have been made in this direction; in large zemindaries, not only have the system of accounts undergone a thorough change; but the system of counter-foil receipt, now required by the Draft Bill has been already introduced. The short lease Thikadary system, a legacy of the past

has been in some cases entirely done away with, and proper checks introduced to protect the Ryots from the rapacity of the village Amlahs. In short, since the last few years whenever any thing wrong has been pointed out in their system, the Behar Zemindars have not been slow in introducing reforms ; and when the present laws are admitted on all hands to be sufficient for the protection and welfare of the Ryots, and are undoubtedly such, that consistently with the existence of present zemindary rights a greater land law reform is not possible, and at a time, when the Ryots are awakening to a sense of their rights and the landlords by no means inclined to look on this with disfavor, it can hardly be expedient to unsettle the law, and to make the landlords jealous of the rights of their tenants. 'The great point', to use the words of Sir John Shore, 'required is to determine what is and what is not oppression, that justice may be impartially administered according to fixed rules in Behar.' This was said in 1789 ; and the great point now as it was then, is to administer impartial justice, to visit real causes of oppression with condign punishment, and not to introduce a land law reform which while abrogating customs on a mere *a priori* view of their disdvantages, will be tantamount to confiscating half the zemindary rights.

In their Report on this chapter, the Commissioners set forth : " The Behar system is really a Metayer system with most of its worst features and few of the advantages enjoyed by tenants of this class in continental Europe. The European Metayer is usually secure in the possession of his land and is certain at least of half the gain resulting from any improvements which he makes by his own labor or capital. His landlord furnishes half the plough cattle in some places, and in other, half the seed. In many places a house is kept up for him. Thus he recives considerable assistance towards producing the crop in which he and his landlord are sharers. The Behar Ryot on the contrary gets nothing but the bare land ; his possession is insecure, and he has no incentive to improvement, while the petty oppressions practised in collecting a rent in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone."

It is submitted with due difference that the statement that the Behar *Bhowli* Ryot gets nothing but the bare land, is erroneous. The fact is that in more than one particular, the *Bhowli* Ryot in Behar receives substantial assistance from the landlord in producing the crop; thus the landlord pays for the *gilandazi* (earth-works) ; he constructs *bunds*, excavates *Pynes*, buys water for the rice crop where it is necessary to buy such water from a neighbouring proprietor, digs tanks and wells and keeps the old ones in repair, pays for the construction and periodical repair of the field and village channels, and also for all arrangements for the proper drainage of the land. He has frequent dispute with the neighbouring proprietor with respect to some one or other of these matters and the cost of the litigation is entirely his. Thus the cost of all the material improvements of the land, so far as they are known and practised in India, falls on the landlord. The average annual expenditure on these heads, is not inconsiderable. In most agricultural villages, the house in which the Ryot lives, is built at the expense of the landlord, and the Ryot gets *bamboos* and sticks periodically, free of charge, to keep it in repair. He pays no *Mataharfa* (ground-rent) for the site of his house or even for the house which the landlord constructs for him. He gets a portion of the *Sayers* (fruits, fishes &c) of the village without paying any rent for the same. At the time of the distribution of the crops, in addition to the *Nyari* (straws)—a valuable commodity with paddy crops—the Ryot receives all the *Powal* (hay) and *Bhusa* (husks) for use as fodder for the cattle employed in the husbandry. The grazing commons, the pasture lands of the village, are in the Ryot's use, free of rent. The landlord thus bears all the burden of feeding the cattle. In bad years, which are more common than good ones, the Ryot receives a *Tuccavee* advance from the landlord for the purposes of cultivation. In *Agorbattia* system, the landlord furnishes the *Agora* (watchmen) to watch the crops, and he alone, pays the wages of these men. How the case is with the *Metayer* tenure in continental Europe the Committee are not aware ; but in Behar under a *Bhowli* tenure, the landlord

gets only his share of the actual out-turn of the quantity of land which the Ryot cultivates. Suppose, the Ryot holds 100 bigahs and he cultivates only 50 bigahs. The Zemindar gets for his share, the produce of the 50 bigahs only ; and he prefers no claim for rent for lands which are left uncultivated. Damage suit on this head is unknown in Behar and thought this condition of things may at times lead to forcible ouster in cases where the Zemindar sees that the Ryot leaves his land intentionally and negligently uncultivated, in the majority of cases, the Zemindar acquiesces in this state of things without a grumble, and the *Bhowli* tenant is as much secure in the possession of his holding as the metayer tenants are in continental Europe. *Bhowli jumabundis* will show, the variations from year to year, of the actual quantity of land from which the Zemindar receives his rent. A variety of circumstances which do not at all affect the Zemindar's rent-roll under *Nukdi* system, raise or diminish the amount of the landlord's rental under a *Bhowli* system ; so that if, to use the words of the Report 'enhancement on the ground of increase is a stern reality to the Ryots of Behar,' it is also no less true, that diminution of rent on the ground of vicissitudes of season and various other causes is a stern reality to the landlord in this province ; and the landlord can only keep his own by prudently managing to counterbalance his loss in one year, by his gain in the next. *

Turning to the special provisions for Behar, we find that the first of these provisions runs thus : "Every Ryot, who on the day of is in occupation of land other than *Zerat* land, and has occupied the same continuously for the 3 years next preceding such date, has a right of occupancy in such land which he has so occupied for three years continuously, if during each of the 12 years next preceding such aforesaid date, he has occupied any land other than *Zerat* land in the estate in which first mentioned land is included, or in any estate, which with such estate at any previous time formed a single estate." The Behar Rent Commission simply recommended for the enactment of a presumption in the Ryot's favor to the effect that any resident Ryot who has cultivated any land continuously in any estate for 12 years shall be held to have acquired occupancy rights in the whole of his holding in such estate, The presumption would be rebutable and would simply involve a question of *onus* of proof. It would not otherwise materially affect the present law, though of course much might be urged against even this limited change. The Calcutta Rent Commission has cut down the period of occupancy from 12 to 3 years; for the new provision is tantamount to giving occupancy rights to 3 years holding, without any regard to the previous right of the occupant for the preceding *nine* years, or without any regard to the quantity of the land he held. Thus if a Ryot held different areas of 2,4,5,6,8, 10, 12, 3, 7 bigahs as a tenant from year to year during the preceding nine years, and happens to hold continuously 100 bigahs for 3 years immediately preceding the date of the passing of the Act, he will have a statutory right of occupancy with respect to the whole of these 100 bigahs.

Section 81.

The definition of *Zerat* land which comes in by way of explanation under this section unsettles the laws that have hitherto prevailed' Occupancy right was denied to the Ryots holding these lands, by Act X of 1859 and the right is denied to them under the Bill. (Vide Expl. 4, clause (*g*) of Sec. 19).

* Compare this with the case of the metayer tenancy in continental Europe. In Champagne the landlord commonly finds half the cattle and half the seed and the metayer, labor, implements, and taxes; but in some districts the landlord bears a share of these. In Roussillon, the landlord pays half the taxes; and in Guiene, from Auch to Fleuran, many landlords pay all. Naar Aguillon, on the Garonne, the metayers furnish half the cattle. At Nangis, in the Isle of France the landlord furnishes live stock, implements, harness, and taxes; the metayer finds labour and his own capitation tax : the landlord repairs the house and gates ; the metayer the windows : the landlord provides seed the first year, the metayer the last ; in the intervening years they supply half and half. In the Bourbonnois the landlord finds all sorts of live stock, yet the metayer sells, changes, and buys at his will ; the steward keeping an account of these mutations, for the landlord has half the product of sales, and pays half the purchases. In Piedmont, the landlord commonly pays the taxes and repairs the buildings, and the tenant provides cattle, implements, and seed.

But though this is law in one part of the Bill, it will not be law under the definition of *Zerat* as given in Sec. 81. Suppose A, a rich Zemindar, whose zemindary includes in it, a great quantity of land, which he has held as *Khudkast or Sir* land from a very long time, and instead of tilling these by his servants or hired labourers, he has let them out to Ryot B; B, will be entitled to right of occupancy, with respect to these lands, if he held them continuously for the preceding 3 years, and any other bit of land not of this description in the estate for the preceding 12 years, and this notwithstanding the declaration in another part of the Act that no period of occupation will give the right of occupancy to holders of *Nij-jote* or *Sir* lands.

Section 82.

The second special provision for Behar is that if a Ryot *agrees* to give up his lands with respect to which he has a right of occupancy, in exchange for other lands forming a portion of the same estate, such Ryot shall have a right of occupancy in the land *agreed* to be received by him in exchange there-for-. If he be not a consenting party to such exchange, the law leaves him to seek his remedy in the courts. The provision is intended to over-ride all private contracts. Suppose A, a Ryot, in exchange for two bigahs of lands in which he has a right of occupancy, agrees receive 50 bigahs of lands on a yearly tenancy; the law interferes, and gives him a right of occupancy with respect to the 50 bigahs; or suppose A, who has a right of occupancy with respect to some lands of inferior quality agrees to accept lands of a superior quality in exchange on a yearly tenancy; the tenancy immediately on the exchange being effected, becomes a right of occupancy. Such interference, with private contracts it is respectfully submitted, will simply clog business of all kinds. Nor does there appear to be any reason why Behar should be treated thus exceptionally. Lands are thus exchanged with the Ryot's consent in Bengal, as well as in Behar, and when the Ryot is a free agent in the matter of this exchange, he no more deserves special sympathy in Behar than he does in Bengal.

Section 83.

The Behar Rent-Commission recommended that where the proportion of the produce to be taken by Zemindar is not specified in any written agreement, it shall be presented that the Zemindar is entitled to half, and the Ryot to half. They well knew that in several cases, the Zemindar's share from ancient times is nine-sixteenths of the produce and they simply intended to provide, that in all cases in which the Zemindar wanted more than half, he would have to produce a written contract. The Zemindar's proportion of the produce, under the Bill, is cut down to half whatever might have been his right hitherto; and unless the Ryot can show a written agreement to the contrary, this proportion shall be presumed to be one-half.

It is said that where, the landlord leaving all the risks of cultivation to the cultivator, receives more than half of the produce, his proportion is *obviously inordinate*. The Committee have elsewhere shown how the remark is based upon incorrect data. It is also to be observed that the proportion received from metayer tenants by their landlords is oftentimes more than half: thus in several districts in Italy it is two-thirds. *

In cases where this proportion is a vested right, and contracts have been entered into on the faith of such right, it will be simply creating confusion of all kinds, if the Legislature were to interfere. Purchases and sales have been made, on a calculation of net profit according to this standard, mortgages have been made and leases effected. The legislature did not hitherto interfere, and it becomes a serious case of confiscation when now it does.

Section 81.

The 'proper officer, referred to in clause(*b*) of this section should not be one below the grade of a Sub-Deputy Collector. If the 'amlah' be told off to this duty, ten to one the award will be in favor of the party who would bid the highest for such award.

Section 86.

The provision for the commutation of *Bhowli* into *Nukdi* rental in cases of occupancy holders at the option of either the Zemindar or the Ryot will be a death-blow

* The influence of custom is worth noting. Even in admittedly clear cases of tenancies-at-will under *Bhowli* tenure the landlord's proportion of produce not more than his proportion in cases where the Ryot's tenancy is of a higher kind; and even in changing one tenant-at-will for another, the landlord alters nothing in the terms.

to the *Bhowli* tenure In some year, it will be the interest of the Zemindar to seek for such commutation, in other years, it will serve the Ryot's interest better; but it is to be feared, that the interest of both will suffer, in the long run, by such commutation. Payment of rent in kind may not chime in with civilized notions of things; but nevertheless, a custom which has survived the change of ages, and has been handed down from generation to generation, being acquiesced in both by landlords and tenants, must undoubtedly have its uses. *

PART II.

THE PROCEDURE IN SUITS BETWEEN LANDLORDS AND TENANTS.

Section 95 (*a*)

One consequence of a concurrent jurisdiction in enhancement suits, to be vested in the civil court and the Collector, will be that the (plaintiff or applicant) will choose his own tribunal according to the known proclivities of the trying officer.

The first three grounds specially the 2nd and the 3rd can be determined only on evidence directed to each individual case and it is hard to understand, why concurrent jurisdictions should be vested in the civil court and the Collector in enhancement suits based on these grounds.

Where, as in these cases evidence relevant and admissible under the law is to be the basis of the decision and the exclusion of *res inter alios acta* should be the rule, it is hard to see what advantage, the Collector can have over the civil courts in coming to a right conclusion.

Section 95. (*b*)

On what principle is the *Ijaradar's* right to enhance restricted to the first three grounds and that only by proceedings in the civil courts? Does it not look as if the Collectors proceedings are not likely to be so favorable to Ryots, as the proceedings in civil courts? There does not appear any reason, why the fact and law being the same, the decision of civil courts and that of the Collector should not be the same, and why it should be considered as a favor shown to landlords to place the executive agency of Government at his disposal for purposes of enhancement. As to the matter of cost, while the Zemindar will have to pay court fees in one case, he will have to pay for the pay of the Deputy Collector, and Collector's establishment in the other.

If the Ryot is not entitled to retain all the advantages by a rise in prices when the landlord is other than an *Ijaradar* whose unexpired term is less than 10 years, why should the case be otherwise where the term is less than ten; specially when the other grounds of enhancement are left open to him. If the provision is meant to discourage the *Thikadary* system in Behar, the end is not likely to be attained, as it is not by enhancement suits that the *Thikadars* generally harass the Ryots. The paucity of enhancement suits in Behar clearly demonstrates this.

Section 99. *& the following Sections.*

Proceedings before the Collector are likely to be somewhat of the following nature: On the presentation of an application to the Collector, he (the Collector) will call for a *kaifieth sherista* (*i.e.*) for a report from his Sheristadar. On this *kaifieth*, he will issue notices, and in cases of contest, he will depute an Amin not ordinarily an officer of the fixed estab-

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of the agreement. If the Ryots are sometimes evicted it is not for enhancing the rent that the landlord evicts them.

* One argument against a Metayer tenancy is that in this case, the Metayer's interest for 'improvement' is only half as much as that of a peasant proprietor, but if the interest of the *Bhowli* tenant could be thus measured, there is that of the *Bhowli* landlord which should also be taken into account, and in the interest of cultivation of Behar, it is a serious matter for consideration, whether the landlord's interest should or should not be diminished. Mr. Mill thus replies to the arguments for commutation. "If this transformation were effected, and no other change made in the Metayer's condition; if preserving all the other rights which usage ensures to him, he merely got rid of the landlord's claim to half the produce, paying in lieu of it a moderate fixed rent; he would be so far in a better position than at present, as the whole, instead of only half the fruits of any improvement he made, would now belong to himself; but even so, the benefit would not be without alloy; for a Metayer, though not himself a capitalist, has a capitalist for his partner, and has the use, in Italy at least, of a considerable capital, as is proved by the excellence of the farm buildings; and it is not probable that the landowners would any longer consent to peril their moveable property on the hazards of agricultural enterprise, when assured of a fixed money income without it." The remark would apply *verbatim*, if we were to substitute Italy for Behar, and the *excellence of the farm buildings*, for the excellence of the *gilandazi system*.

lishment, to the Mafussil to ascertain all the points in dispute. Ten to one the Amin's report will be in favor of the party who would please him the most. The party dissatisfied will of course be entitled to bring his objections to the report, but the Collector whose onerous duties are already too much for him, will from the short hearing he will be able to give to the case, scarcely find anything to interfere with in such report. The above is the procedure, now adopted in cases coming before the Collector under Sec. 38 of Act VIII (B. C.).

Section 119. The *Malkucherry* is the Zemindar's place of collection of rent, and in as much as the affixing of a copy of notice at the *Malkucherry* will be held to be sufficient notice to the Ryots; a dishonest Zemindar may not be unlikely tempted to have this so done as not to give any notice to the Ryot at all.

In Behar, notice to the village Mahtonara or as he is also the *jaet* Ryot of the village, would be a better mode of service In places where the Chowkidari Punchaet exists, service may also be advantageously made through the Punchaet.

Section 149. Who is to sue in cases where a Manager is appointed under Section 66? It does not appear that the Manager appointed under that section can bring suits referred to in this section, for under Sec. 67 his power is thus defined: "For the *purposes of management*, he shall have and shall be entitled to exercise the same powers which the co-parceners jointly might but for his management, have exercised."

Section 151. It would appear from the provisions of Sec. 27, that a 3 years' Ryot, when he has been served with a notice of increased demand of rent, *shall be* liable to pay such increased rent, if he continues to hold on. The present section provides for a suit by such Ryot, for the determination amongst other matters of the amount of annual rent payable by such Ryot. Is this power to sue for the determination of the annual rent payable, to be restricted to cases, where an increased demand has not been made?

Section 151. (*c*) Sections referred to in this clause are sections 32, 33 and 34. These sections however refer to Ryots holding land for less than 3 years and clearly appear to be misquotations.

Section 153. Can the Ryot relinquish the land under Sec. 31 and ask for compensation, without in the first instance establishing his right to abatement under this section? It would seem that he can, and in that case, he has an alternative remedy allowed to him for one and the same cause of action.

Section 210. Why should the term 'Khudkast, Ryot be retained in Sec. 210, and if the term is to be retained at all why should it not be properly defined? The discussions prove how vague the commonly accepted meaning of the term is. Again in Behar, the term does not mean resident and heriditary Ryots but Ryots who hold and cultivate the *Malik's Zerat* land.

Section 211. In cases of summary sales of *Putney Taluks* the balance after satisfying the Zemindar's claim for rent is to be sent to Government Treasury to meet claims of persons endamaged by sale. (Clause 3, Sec 145). The under-tenure holders are free to sue for price of their interest or compensation (Clause 4, Sec. 145), and payments are to be made out of the surplus sale proceeds if plaintiff's claim is found equitable. (Clause 5 of the same section). Should not a similar measure of protection be given to inferior holders, or other persons endamaged by the sale of tenures and holdings in execution of decree, when such sale takes place free of all *incumbrances*?

In concluding this Note the Committee beg to add the following summary of the most important changes proposed by the draft Bill affecting the Zemindary interests. They do not see how it can at all be seriously said that the advantages offered to the zemindars (which to them, appear to be *nil*) are a full equivalent of what is taken away from them.

Summary of the most important changes affecting the Zemindary interests.

(1) Converting into tenure holder or under-tenure holder, Ryots, to whom more than 100 standard bigahs have been demised otherwise than for a term or year by year and making the tenure and under-tenure of such tenure holder or under-tenure holder permanent and transferable, after 12 years

holding. (Sec. 11, clauses *a* and *b*).

(2.) Limitting the landlord's right of enhancement in these cases first by allowing 30 per cent profit to the tenure holder under Sec. 9 ; whereas the profit allowed him by the Regulations was only 10 per cent ; 2ndly by providing that the rent of a tenure holder once enhanced is not to be enhanced for a period of ten years next ensuing (Sec. 10) ; and thirdly allowing a minimum profit of 20 per cent to tenure holders when the lands are let out for reclamation. (Section 12).

(3.) Extending the right of occupancy in cases where it can not be acquired under the law as it prevails at present (Sec. 19, Explanations.)

(4.) Making occupancy rights saleable in execution of a decree for arrears of rent and transferable by sale, gift or devize. (Section 20).

(5.) Depriving the landlord's of the power of evicting occupancy ryots for non-payment of rent. Section 20 (*c*).

(6.) Limitting the ratio of produce payable to the landholder for lands, rent of which is payable in kind, to 50 per cent when the occupancy Ryot does not receive from his landlord seed or labour or other assistance. [Section 21).

[7,] Limitting the landlord's right of enhancement of rent in various ways [*a*] by providing that the enhanced rent shall not be more than double the former rent Section 23 (*b*); (*b*) by providing that the enhanced rent should not on any ground, exceed twenty-five per cent of the average annual value of the produce of the land Section 23 [*c*]; [*c*] by providing for progressive enhancement Section 23 (*d*).

[8.] Creating a subordinate kind of right of occupancy, in favor of Ryots who have held only for 3 years with rights attached [Sections 26 to 31].

[9.] Giving ryots who have held for less than 3 years, the right to hold on the old rent unless there be a written agreement or unless he be served with a written notice to pay more on grounds to be stated in such notice Section 35, (1).

[10.] Limitting the landlord's right to demand higher rent, to amount which is not tobe more than double the former rent limitting the landlord's right of re-entry ni these cases.

[11.] Giving all ryots, irrespective of their status, the right to build brick-built dwelling houses and other houses and out-offices on the lands let out to them, without the landlord's permission. (Section 36).

(12.) Extending the right of occupancy to tenants who have held land used for building or other purpose for 12 years and more. (Section 41).

(13.) Making the interest of the person who has thus acquired a right of occupancy, heritable, transferable and devisable, and saleable in execution of decree. (Section 41 *b*).

(14.) Limitting the rent of such lands to a maximum of 5 per cent of the market value of such land. (Section 42).

(15.) Giving Ryots the power notwithstanding customs and contract to the contrary to cut down trees and appropriate them. Section 77 (*b*).

(16.) Not allowing the landlord to settle the land with other Ryots in cases of abandonment, until one year has expired from the date of such abandonment. Section 79 (4).

[17.] Allowing Ryots ejected from land, the right to the away-going crops, and to enter on land to remove them [Section 80].

[18.] Proposing to enact for Behar, that all Ryots are to have rights of occupancy in land held by them for 3 years, if they held any land in the same estate for 12 years previously [Section 81].

(19.) Also that all Ryots are to have right of occupancy in land received in exchange from his landlord for land in which he had a right of occupancy [Section 82].

[20.] Limitting the landlord's proportion of produce in *Bhowli* tenures to 50 per cent [Section 83].

[21.] Giving occupancy Ryots in Behar the right to commute rent payable in kind to an annual money rent Section [86].

They have also added a separate note on the law of distraint, which it is proposed, to abolish, and also another note on the Permanent Settlement, showing how the rights of Zemindars and Ryots stood then and showing also that the proposed distribution of the produce of the soil is not at all justified by the power, reserved to Government under that Settlement. They have much misgiving, that though many valuable rights will be taken away from the landlord to be given to Ryots, the interest of the present race of tenantry will seriously suffer by the change, and holding this view, they beg to repeat what they said

in the concluding paragraph of their last year's memorial.

'The relation of the landlord and tenant may not be so satisfactory as could be wished: but the remedy for this undesirable state of things is not to be found in fresh legislation, but in a better understanding by the parties themselves, of their respective interests. That interest is, not at all as is ordinarily supposed antagonistic, and if things are only allowed to take their own course, this identity of interest will prevail, and a satisfactory relation between the parties established,—a desirable change which can only be retarded but not at all accelerated by legislation, the effect of which will be the unsettlement of defined right and with it, an increase of litigation.'

The changes against which the Association had then to protest were as nothing compared to the changes proposed by the present draft Rent Bill, and should it please the Government to introduce it in the Legislative Council, it is to be hoped that at least a sufficiently long time should be given to the public for a full discussion of its provisions. In submitting this note, the Committee beg to say, that the short time allowed them for the consideration of the Bill, accounts, to a certain extent for its scantiness.

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NOTES ON THE PERMANENT SETTLEMENT.

NOTES ON THE PERMANENT SETTLEMENT.

Whether before the date of the Permanent Settlement, the Zemindars were proprietors of the soil, or mere collectors of revenue, is a question which has now at best only some amount of historical interest. For all practical purposes, speculation into this question will perhaps be as barren of result as the determination of the question whether the ryots were not *serfs* in those good old days. The question was considered of very little moment even at the time of the Permanent Settlement by its noble author when he says "(61). The question that has been so much agitated in this country whether the Zemindars and Talukdars are the actual proprietors of the soil, or only officers of Government has always appeared to me to be very uninteresting to them" (Lord Cornwallis' minute, dated 3rd February 1790, p. 24.)

Possibly the character of a collector of Government revenue was ingrafted on the persons who were found to be the actual proprietors of land, and the functions of a Government officer and the right of a proprietor of land became so blended together that at the date of the Permanent Settlement there was some difficulty in determining what was the actual character of the then existing body, known as Zemindars. There is, however, really very good evidence to show that at least the Zemindars of Behar had a higher status than that of collector of land revenue. Not only was their right then heritable and transferable like that of the Zemindars of lower Bengal but their *malikana* (proprietory) right used always to be admitted when the estates were farmed out, and they used to receive a certain percentage of the Government revenue realized from farmers as *malikana*, or sometimes they retained a tithe of the lands of an estate in lieu of such right. Sir John Shore speaking of the points of difference between the system of Bengal and Behar says "Secondly. The proprietors of the soil in Behar universally claim and possess a right of *malikana*, which whenever they are dispossessed of the management of their lands they receive from the *aumil*, as well as from the tenants of *Jagheers* and proprietors of *Altamghas*. In Bengal no such custom has ever been formally established although there is some affinity between this and the allowance of *moshaird*."

It was in accordance with this view of rights of Zemindars in Behar that *malikana* allowance at the rate of ten per cent, on the Sudder *Jumma* of their lands was continued to them even on their finally refusing to engage for the *Jumma* required (Sec. XLIV Reg. VIII, 1793). The class of persons at present receiving such *malikana* allowance, is by no means small in this province. It was also in recognition of such proprietory right that a deduction equal to the amount of *malikana* over and above the *Khurcha* was made in the amount of assessment (Vide Sec. LXXXIII Reg. VIII of 1793). But the question is not what the Zemindars were previous to the Permanent Settlement; but what their status is under that Settlement. It is by reference to that Settlement which they have justly come to regard on the faith of our benign Government, whose faith has never been known to be broken, as the "constitutional charter" of their rights,

* The origin of most of the Rajes in Behar, is lost in the remotest antiquity. Their history clearly proves that their owners were at one time the lords paramount of the soil.

that such rights have to be determined. The Permanent Settlement which was solemnly proclaimed in March 1793 and which was declared 'unalterable by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country,' partakes of the nature of a solemn contract between the government on one side and the land-owner on the other. * It is somewhat in the nature of a perpetual contract lease (just such as afterwards sprung up under the name of *Putney* leases) under which, Government 'in consideration of justice, of good policy, and of the immediate interest of the East India Company,' made over as it were in perpetual lease, its own *quota* of *produce* of every *bigah of the land* for a permanent money rent which the persons with whom the settlement was made, bound themselves to discharge without perferring any claim or application for suspensions or remissions on account of drought, inundation or other calamity of season. (Vide section VII of Reg. I of 1793). The contract was, of course, suggested by the highest amount of good-will on the part of Government toward its subject races; it was nevertheless not a *nudum pactum*. We will proceed to the examination ;—*first*, of the considerations of such contract; *secondly*, as to what passed to the zemindars under such contract; *thirdly*, as to the several stipulations entered into between the parties at the time of such contract. The considerations are thus stated by its noble author : " The attention of Government ought, therefore, to be directed to render the assessments under the lands as little burdensome as possible. This is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue.

" 90. In case of a foreign invasion it is a matter of the last importance, considering the means by which we keep possession of this country, that the proprietors of the lands should be attached to us from motives of interest. A landholder who is secured in the quite enjoyment of a profitable estate can have no motive for wishing for a change. On the contrary, if the rents of his lands are raised in proportion to their improvements, if he is liable to be dispossessed should he refuse to pay the increase required of him, or if threatened with imprisonment or confiscation of his property on account of balances due to Government upon an assessment which his lands are unequal to pay, he will readily listen to any offers which are likely to bring about a change, that cannot place him in a worse situation, but which holds out to him hopes of a better.

"Until the assessment on the lands is fixed, the constitution of our internal government in this country will never take that form which alone can lead to the establishment of good laws and ensure a due administration of them; for, while assessment is liable to frequent variation, a great portion of the time and attention of the Supreme Board and the unmitigated application of the Company's Servants of the first abilities and the most established integrity, will be required to prevent the landholders being plundered and the revenues of Government diminished at every new settlement, and powers and functions which ought to be lodged in different hands must continue, as at present, vested in the same persons and whilst they remained so united, we cannot expect that the laws which may be enacted for the protection of the rights and property of the landholders and cultivators of the soil, will ever be duly enforced.

" We have by a train of the most fortunate events obtained the dominion of one of the most fertile countries on the face of the globe with a population of mild and industrious inhabitants, perhaps equal to, if not exceeding in number that of all the other British possessions put together.

"Its real value to Britain depends upon the continuance of its ability to furnish a large annual investment to Europe, to give considerable assistance to the treasury at Calcutta, and to supply the pressing and

* The settlement in 1789 was made under the denomination of *Karar Jummadih Sala* (Vide Resolutions on the Bengal settlement No 54 p 40. Papers relating to the Permanent Settlement.) The word *Karar* is the vernacular translation of the word 'contract.' The deeds that were exchanged were called *Pottahs* or *Amuldustuks* and *Kubooliats*. The consent of the Zemindar and their qualification to give such consent were held essential to the validity of the settlement. [Vide Sections XXI and XXVI of Reg. VIII of 1793.]

extensive wants of the other presidencies.

"The consequences of the heavy drains of wealth from the above causes, with the addition of that which has been occasioned by the remittance of the private fortunes, have been for many years past, and are now severely felt by the great diminution of the current specie, and by the languor which has thereby been thrown upon the cultivation and the general commerce of the country.

"A very material alteration in the principles of our system of management has therefore become indispensably necessary in order to restore this country to a state of prosperity, and to enable it to continue to be a solid support to the British interests and power in this part of the world.

"We can only accomplish this desirable object by devising measures to rouse and increase industry of the inhabitants, and it would be in vain to hope that any means but those of holding forth prospects of private advantages to themselves, could possibly succeed to animate them to exertion.'

These considerations may be briefly summed up thus :—

Firstly;—the development of the agricultural resources of the country.

Secondly ;—security and permanency of the Government revenue.

Thirdly;—the obtaining the attachment of landholders to Government by securing to them the quite possession of a profitable estate.

To these may be added ;

Fourthly;—the acquisition of a further security for the realisation of Government revenue demands in the property, moveable and immoveable of the Zemindars other than that for which such revenue would be payable. (Reg. XIV, of 1793, Sec. XLIV.)

Fifthly ;—the amalgamation in Behar, of *malikana* lands, and in Bengal and in Orrissa, *nankar*, *khamar neej-jote* and other private lands of the proprietors with the *malgoozary* lands, fixing the assessment on both these classes of lands and making them jointly liable to sale for the due discharge of the stipulated Government revenue. (Reg. VIII of 1793, Secs. XXXVIII and XXXIX.)

The sufficiency of these considerations to support a contract appears undisputed. *

We will next see what passed to the Zemindars under the contract. Previous to the date of the settlement, the produce of the land appears to have been shared by the State, the zemindar, and actual cultivators. In some cases a middleman between the zemindar and the actual cultivators intervened. Of course, it was not a portion of the actual produce that passed to the State ; but though the Government claim was used to be commuted to money, at the time of each settlement it was always this share that was claimed. (Vide preambles to Regs. XIX and. XLIV of 1793). § What was this share it is not now easy to determine ? We find from the Fifth Report page 16, that this share was something like three-fifths of the actual produce. The following quotations will show this :—

"In the extensive plains of India a large proportion, estimated in the Company's provinces at one-third by Lord Cornwallis, at one-half by others and by some at two-thirds of lands capable of cultivation, lies waste and probably was never otherwise. It became therefore, of importance to native Governments, whose principal financial resource was the land revenue to provide that, as the population and cultivation should increase, the State might derive its proportion of advantages resulting from

* We do not lay any stress upon the valuable consideration which has since passed on the occasion of sales of Zemindaries ; for it may be urged that in such considerations Government did not share ; yet it has to be remembered that it was on the faith of the original contract, the meaning of which has not hitherto been otherwise interpreted, many people have invested their all in the purchases of estates at public and private sales, other kinds of private contracts have been entered into and valuable considerations passed. There are cases also in which Permanent Settlement of *Khas mahal* estates has since been made by Government for the highest amount of premium bid at auction sales.

§ "By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bigah of land demandable in money or kind, according to local custom, unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public whilst he continues to discharge the latter.' Preamble Reg. XIX of 1793. To the same effect Preamble Reg. XLIV of 1793.

this progressive augmentation. * * * This rule is traceable as a general principle through every part of the Empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivators and the Government. The shares varied when the land was recently cleared and required extraordinary labour, but when it was fully settled and productive, the cultivator had about two-fifths and the Government, the remainder."

Under the regulations fixing the permanent assessments, this proportion was taken to be represented by ten-elevenths of the rent-roll of an estate (Reg. I, 1793 Sec. VII and Reg. II, 1793 preamble), and the remainder represented the share of the landholder. It was thus that this State share of the actual produce which when the assessment was not fixed and permanent, varied with every settlement, was commuted to money in 1793 on a valuation of the produce of all the lands then in cultivation and with due regard to the prospective increase from the produce of the lands then lying waste and uncultivated; and such commuted money value declared fixed and unalterable for ever. The Government transferred to the persons, described as actual proprietors under the Regulations, the right to collect and appropriate to themselves the State share of the actual out-turn of every bigah of land which were then in cultivation and which would come under cultivation at any future time in perpetuity in consideration of their agreeing to pay the *Jumma* (the Government revenue,) demanded in 1793 for all time to come without preferring any claim for remissions on the ground of drought, inundation or other calamity of the season. It is useless to enquire now how hard the *Jumma* pressed then, and how many actual proprietors refused to agree to this *Jumma*. As for those that agreed to this assessment the Permanent Settlement was by no means, an immediate boon. The histories of Zemindaries will show that but few of them are now in the hands of the descendants of those with whom the original settlement was made. Several Zemindaries had in fact to be sold during the first few years after the settlement. [Vide preamble Reg. VII of 1799]. To quote Mr. Mill, "the selling of the Zemindaries immediately began and proceeded with a rapid pace. In the year, 1796, the land advertised for sale comprehended a rent-roll of 28, 70,001 sicca rupees, which, according to the total assessment, was nearly one-tenth of the whole of Bangal, Behar and Orrissa in a single year. By the progress of this operation, the whole class of the ancient Zemindars instead of being erected into an aristocracy was speedily destroyed."

But whatever the immediate effect of the Permanent Settlement was, and whatever misery it might have brought upon the persons who in those days had to agree to Government assessment there can be no question that it is now a great blessing both to their descendants and to others to whom their zemindaries might have passed; and that it is considered a great blessing to the country by all its real well-wishers. What the Zemindars obtained then and what they are in possession of now, under the Permanent Settlement may be thus summed up.

1st An assignment of the State share of the produce of every bigah of land for a fixed money assessment in perpetuity.

2nd. A recognition of a proprietory right to this assigned share, subject to the payment of the fixed assessment, and to their own share of the produce, in cases where the proprietory right extended only to such share of the produce, or to money rent in lieu.

3rd. A full recognition of their right to let the lands comprised in their zemindaries to whom-so-ever they pleased and in whatever manner they pleased [Vide Sec. 52 of Reg. VIII of 1793], excepting lands which were comprised in any *Mukurrary* (under Sec. 49 of Reg. VIII of 1793), or dependent *Taluks* under Sec. 51 of the said Regulation and also excepting lands that were in occupation of *Khudkast* Ryots (Sec. 60, clause 2). The last exception, however, did not apply to Behar.

We have here the fullest proprietory right recognized. The Zemindar was to do what he would think best to do with his own: fullest freedom was to be allowed to him to let out his lands to any person on whatever terms he pleased, for how long he pleased and for what rents he pleased. The only fetter to his freedom in these respects was

to be the natural fetter of supply and demand. There were serious apprehensions entertained for sometime after the Permanent Settlement, that the Zemindars might for their present benefit do something that would seriously impair the interests of the Government Revenue and the earlier regulations were directed to prevent them from doing so. If Government then, in its anxiety for the protection of the Government Revenue, thought fit to intervene between the Zemindar and his freedom of action, it was to prevent him from injuring his interest and that of Government by conceding too much to under-tenants under the then state of the rule of supply and demand (Vide Preamble, Reg. XLIV of 1793). *

If Government then thought fit to interpose between the Zemindar and the Ryot, it was to enable the Zemindar to enforce his contracts with his Ryot, and to afford him increased facilities for the realization of his rents, on which depended in a great measure the punctual payment of Government Revenue (Vide Preamble, Reg. VII of 1799). *

This was the state of the law when Government thought fit to discharge what it conceived, to use the words of Sir Frederick Halliday in his minute dated the 27th November 1858, "a heavy obligation towards the Ryots, long unfulfilled by our legislation by enacting Act X of 1859." Two successive Chief Justices of the Highest Court of judicature of this country condemned the new right of occupancy given under that law to Ryots as 'an invasion of the Zemindar's rights' and as inconsistent with such rights (Vide remarks of Sir Barnes Peacock and Sir Richard Garth quoted at p. 10 of these Notes).

There are some, however, who are not content to have these learned judges as their guides, but they appear to think

* Preamble to Reg. XLIV of 1793 declares "the public demand upon the estates of the proprietors of lands, having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent *Toluks* to be held at a reduced *Jumma*; or fix the *Jumma* of such dependent *Taluks* as now exist in their respective estates at an under-rate; or let lands in farm or grant *Pottahs* for the cultivation of land at a reduced rent for a long time, or in perpetuity. Such engagements if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors to render their property of little or no value to their heirs; promote vice and injustice; occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue, reserved by such proprietors, being insufficient for the discharge of the amount of the public demand upon those estates; be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment; and moreover be repugnant to the ancient and established usages of the country according to which the dues of Government from the lands (which consist of a certain proportion of the *annual produce of every bigah* of land, demandable according to the local custom in money or kind, unless Government has transferred its rights to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land leaving him to appropriate to his own use the difference between the value of such proportion of the produce, and the sum payable to the public, so long as he continues to discharge the latter) are unalienable without its express sanction." It is noteworthy that the mischief which the Government had then to guard against was not arbitrary enhancement of rent but its improvident abatement.

* Preamble, Reg. VII of 1799. "The powers which the landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payment of the rents due to them from their under-tenants, having in some cases been found insufficient, particularly when the crop, not being in the immediate possession of the under-tenant in arrears, cannot be distrained and sold under the provisions contained in Reg. XVII of 1793 and XXXV of 1795, a considerable delay having also of late occurred in the payment of the public revenue due from many of the landholders, which though ascribable in some instances to the cause above mentioned, can in others be imputed only to a want of good faith on the part of certain of the Zemindars and other landholders who, taking advantage of the delay with which the process for disposing of their lands is unavoidably attended, have withheld payment of their instalments until the day appointed for the sale, and in many instances, there is reason to believe, have bought in their lands, when sold, in fictitious names, or in the names of irresponsible dependants; moreover, the frequent and successive sales of land, within the current year having been found productive of material ill-consequences, as well towards the land proprietors and under-tenants, as in their effect on the public interest in the fixed assessment of the land revenue. The Vice-President in Council, with a view to obviate the above injurious consequences here-after and to establish a more certain and easy process for enabling landholders and farmers of land to realise their rents, and the officers of Government revenue without having recourse to sales of land till the close of the year, has enacted," &c.

that a great injustice was done to the Ryots by Act X of 1859, in as much as it, for the first time, gave a legislative sanction to enhancement of rent and restricting as it did the right of occupancy to 12 years' holding, provided for the ejectment of other than occupant Ryots. We will examine in the next part of these notes what truth there is in this statement.

In the next place we turn to the consideration of the stipulations enterred into between the parties. There were several important covenants entered into this contract; some under which Government reserved to itself certain powers, the Zemindars covenanting not to demur to the due discharge of the fixed assessment when such reserved powers were exercised; some under which Government guaranteed a good title to the Zemindar for all time to come. For our present purpose we will refer only to three of these.

1st. Government guaranteed that the order, fixing the amount of the assessment is irrevocable, and not liable to alteration by any persons whom the Court of Directors may here-after appoint to the administration of their affairs in this country, and exhorted the zemindars to exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management (Art. VI Proclamation and Sec. VII of Reg. I of 1793.)

2nd. By Preamble of Regulation II of 1793, passed only two months after the issue of the Proclamation for the Permanent Settlement and enacted with other regulations on the same date as Regulation I of 1793, it was declared that (we quote only the material portions) "all questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their Ryots were to be tried by courts of civil judicature, and no power is to exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected"

3rd. Government reserved to itself the power to enact laws and regulations for the *protection and welfare* of dependent Talukdars and Ryots and the zemindars agreed not to object on this account, to the due discharge of Government Revenue. (Article VI Proclamation and Sec. VIII of Reg. I of 1793).

These covenants, as coming together cannot be inconsistent with each other and they have to be so construed as not to affect the spirit of the contract.

It is the meaning of the third covenant that has, however, given rise to much discussion.

The words "protection and welfare" are indeed vague: but the meaning is not difficult to ascertain.

It could never have been intended that the reservation of this power would carry with it the power to grant, by enactments, such rights to these classes of men, which did not exist at the time of the Settlement and the conferring of which would be only possible by the confiscation of a part of zemindary rights; for if that was so, the Permanent Settlement would mean nothing. Suppose under the reservation the Government was to make a Ryotary settlement of the lands of these provinces, can it be said that Government would be justified in doing so? If now instead of proceeding so far, Government was to proceed half way in that direction, how can it be said that Government action is justified or justifiable. It is not alone by increasing the amount of the fixed assessment that the Permanent Settlement can be broken, but by a variety of other means as well. To take a concrete example: Suppose the sum of zemindary rights is 16 annas; Government was to take 4 annas of these rights to give to A. B. & C; would not this be an infringement of the Permanent Settlement? As it was never intended at the date of the Permanent Settlement that the amount of public revenue should be ever enhanced, it was never contemplated at that date that Government should do any thing that would in any way deteriorate the value of zemindar's property. This is clear from the spirit of the Settlement itself as also from the spirit and words of the first two covenants noted above. (Preamble of Reg II of 1793 and Reg. I of 1793 Sec. VII and VIII).

The history of the reservation to a certain extent explains its meaning. Sir John Shore thought that some interposition between the zemindars and their Ryots seemed to him absolutely necessary; and on that ground alone, would not advise a Permanent Settlement; for in his opinion, if the zemindars were declared proprietors, they would resent

any interference of Government for the Ryots' protection as an infringement of the rights of landlords to do as they pleased with their own. (Vide Mr. Shore's minute dated 8th December 1789).

The Governor-General replies:—

"Mr. Shore observes that this interference is inconsistent with proprietary right, and that it is an encroachment upon it to prohibit a landlord from imposing taxes on his tenant, for it is saying to him that he shall not raise the rents of his estate, and that, if the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

"If Mr. Shore means that, after having declared the zemindar, proprietor of the soil, in order to be consistent, we have no right to prevent him imposing new *abwabs* or *taxes* on the lands in cultivation, I must differ from him in opinion, unless we suppose the ryots to be the absolute slaves of the zemindars. Every bigah of land possessed by them must have been cultivated under an *express or implied agreement* that a certain sum should be paid for each bigah of produce and no more. Every *abwab* or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has, in such a case, an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion that the zemindars neither now nor ever could possess a right to impose *taxes* or *abwabs* upon the ryots; and if, from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new *abwabs* have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of *like abuses* in future.

"Neither is the privilege which the ryots in *many parts of Bengal* enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietory rights of the zemindars. Who-ever cultivates the land, the zemindar can receive no more than the established rent which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.

"The practice that prevailed under the Mogul Government of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivators must pay the rent to the purchaser."

It follows that Government interference was thought necessary; 1st, to prevent zemindars to impose new *abwabs* on the lands over and above the sum payable under the *express or implied agreement* under which the Ryot cultivated, (observe not to restrict his freedom as to the matter of such agreement;) 2udly, to prevent him to dispossess such Ryots who in *many parts of Bengal* had the privilege of holding possession of the spots of land which they cultivated so long as they paid the revenue assessed upon them and not to restrict his power of eviction in *other cases.*

This was the origin of the reservation made in Sec. VIII of Reg. I of 1793, and the measures that were immediately taken by virtue of such power reserved. The Court of Directors, in sanctioning the proposal of Lord Cornwallis, observes; "But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent position for the purpose of *exaction and oppression.*" The history of the reservation therefore clearly shows that the words *"protection and welfare"* meant only interference for the purpose of preventing *"exaction and oppression."*

Some would, however, go so far as to think that under it, Government is empowered to enact laws for the welfare of the Ryots, *i. e.* for giving the Ryots better rights than they do enjoy under the present law, without any

regard to the rights guaranteed to the zemindars. They say that it is clear and undeniable that even without this reservation, one of the contracting parties, being the Ruling Power itself, could interpose between the zemindar and his tenantry to protect the Ryots from oppression and from proceedings unwarranted by law; and that if the reservation means only mere protection from oppressions it would be quite meaningless; but it has to be borne in mind, that what is oppression now was not oppression then. The zemindars, as stewards of Government Revenue, could then exercise a sort of legalised tyranny over their ryots. Not only could they distrain the Ryots' crops cattle and moveables for the realization of their rent; but they were not even bound to respect the privacy of the Ryots' *Zenana*. They could imprison their ryots and inflict on them corporeal punishment, until they were forbidden to do so, by Reg. XVII of 1793. They could impose any number of *mahtots* and *abwabs* on their ryots, until they were prohibitted to do so by Sec. 55 of Reg. VIII of 1793. They could interfere in matters coming within the cognizance of civil and criminal Courts until they were prohibitted from doing so by Section 66 of the said Regulation. They could demand the rents of their absconded ryots from those that remained, until they were forbidden to do so by section 63; they were deprived of their police jurisdiction under clause 4, Section 67—and these were the measures which were taken immediately after the date of the Settlement for the welfare of ryots under the power reserved. The nature of these measures show again what was meant by the reservation. Doubtless it also meant the protection of such existing rights as some of the dependent talukdars and ryots had, and which were expressly recognized by the Regulations. We will in the next place examine what were these existing rights which were thus recognized. These are; 1st, the rights of dependent Talukdars; 2nd, those of ryots. As for dependent Talukdars, we find, *first* that those whose rents had not changed for the last 12 years before the settlement, or with whom the Zemindar had made an agreement not to lay any increase, were entitled to hold at fixed *mokarrary* rents (Sec. 49 of Reg. VIII of 1793); *secondly*, others who, though not entitled to hold at fixed rates of rents could have their rents raised only under certain special circumstances (Sec. 51 of Reg. VIII of 1793).

Excepting the lands held by these classes of men, the Zemindar was entitled to let out the rest of the lands, comprised in his estate to whomsoever he pleased and in whatever manner he pleased, with one reservation that in Bengal he was not entitled to cancel the *pottahs* of *Khudkast* Ryots. The reservation, however, was not applicable to Behar. (Vide Sec. 60 of Reg. VIII of 1793). Thus we find an important difference between the cases of Ryoti rights as then existed in Bengal, and as it existed in Behar. In Behar no Ryoti rights were recognized; the Zemindar was entitled to let out his lands excepting those comprised in dependent Taluks that existed in his estates, to whomsoever he pleased and in whatever manner he pleased. The reason why the provision in favor of *Khudkast* Ryot was not made applicable to Behar is clear enough. There was no description of ryots here known as *Khudkast* Ryots with the meaning which obtained in Bengal. *Khudkast* lands, here, properly mean, as its etymology would show, those lands which the proprietor cultivates himself. The term means the same as the term *neej-jote* in Bengal, and a *Khudkast* ryot would properly mean here a Ryot who cultivates the *malik's neej-jote* lands.

In Bengal, the Zemindars were to see that the *pottahs* of no *Khudkast* Ryots, that is, of no *resident heriditary* cultivators, were cancelled. It is observable that this strong point of difference between the cases of Ryoti rights in Behar and Bengal has not been noticed in the discussions on the subject. It is clear from the fact of this difference, that all those learned arguments regarding the rights of *Khudkast* ryots which have been so strongly pressed, are not applicable to Behar, however good they may be for Bengal. But even for Bengal it is clear to us: *first*, that the provision in favor of certain Ryots known as *Khudkast* Ryots as contained in Sec. 60, was only *provisional* in its character, that is to say, it was to last only till a permanent arrangement for the protection of these Ryots could be made. It has to be observed that Reg. VIII of 1793, is a mere transcript of certain rules framed at the time of the Decenial

Settlements. The preamble states: "the original rules for forming a decennial settlement of the revenue to be paid from the lands in Bengal, Behar and Orrissa, passed for those provisions, respectively on the 18th September 1789, 5th November 1789, and 10th February 1790, having undergone considerable alterations during the progress of the arrangement; an amended Code of Rules, including the original Rules and the subsequent alterations, was passed on the 23rd November 1791. That code is now re-enacted with modifications and amendments, adapted to the principles of Regulations II and III of 1793, by which the judicial powers hereto-fore in vested the Collectors of the revenue as superintendents of the late courts of *Maal Audalat*, or revenue courts are transferred to the courts of *Dewany Audalat* or courts of civil judicature established in the several *Zillahs* and cities for the trial of all civil suits in the first instance." The section that follows marked as Sec. 2 runs thus:—"A new settlement of the land revenue shall be concluded for a period of *ten years* to commence with the Fussily, Willayati and Bengal year 1197 for Behar, Orrissa and Bengal respectively." In some respects it is a mere record of what took place in 1789, though some of its provisions which were laid down as rule for the guidance of Zemindars after the date of the Decenial Settlement, were retained and enacted as law after the date of the Permanent Settlement.

Now the provisions of clause 2 Sec. LX of Reg. VIII of 1793, regarding the rights of *Khudkast* ryots is a transcript of a portion of Rule 27 of the Resolutions on the Bengal settlement No. 54, printed at page 45 of the Papers, relating to the Permanent Settlement. The wording of the portion of the rule referred to, runs thus:—"That no zemindar, farmer, or person acting under their authority shall be allowed to cancel the *pottahs* of the *Khudkast* ryots except upon proof that they have been obtained by collusion, or that the rents paid by them, within the last three years, have been reduced below the rents of *nirikbundi* of the *Perganah*, or that they have obtained collusive deductions, or upon a general measurement of the *Perganah* for the purpose of equalising and collecting the assesments." On compayison it will be found that this is the very wording of clause 2, Sec. LX of Reg. VIII of 1793s only the words, "the rule contained in this clause is not to be considered applicable to Behar" which are not in the original rules; being the *Resolution on the Bengal settlement only*, are added to the section of the Regulation which is applicable to Bengal and Behar alike. The Rule 27 of the Resolution has a short heading which is worded thus; "*provisional rules for the security of the ryots*," to distinguish it from Rule 28, which is headed "Permanent plan for the ease and security of the ryots" which corresponds with Sec. 61, under which a certain time is allowed to proprietors of lands &c. to prepare and deliver *pottahs* to ryots. In this *permanent plan for the ease and security of the ryots*, we have not a word regarding the *Khudkast* ryots. Evidently the Rule 27 was to be in force only, till the permanent arrangements were not effected, and as at the date when the Rules were enacted in Regulation VIII of 1793, the *pottahs* had not been all prepared and delivered, it was necessary to retain the portion of the Rule 27 regarding *Khudkast* ryots in the Regulation. We will afterwards see what was this "*permanent plan for the ease and security of ryots.*"

Secondly;—That the Rule regarding *Khudkast* ryots was applicable only to those who came under that denomination at the date of the Permanent Settlement.

Clause 2 Sec. 60, refers to certain ryots who happened to have a superior right to others and to be then known under a particular name. The wording clearly points to this; it refers to 3 years antecedent to the date when the rules were framed, just as section 49 refers to 12 years antecedent to that time with regard to Talukdars.

If it was intended to recognize the right of those who under the interpretation of the word *Khudkast*, would come at any future time to be known as such, we might at least have expected a definition of the term *Khudkast*, or a certain substantive law laid down in favor of a class.

Thirdly;—That even if it was intended by the provision of clause 2 section 60 Reg. VIII of 1793 to recognize a customary right in a class of Ryots who would be *Khudkast* under some interpretation of the term, this right was not recognized at the date when the enactment of a law of landlord and tenant

was proposed in 1858. From the papers prepared at that date nothing appears to be so clear as this.

Fourthly;—That as the facts then stood, the right conferred on ryots by section 6 of Act X of 1859, was a great boon to these Ryots and an invasion of the Zemindary right as guaranteed under the Permanent Settlement.

In the opinion of some, however, every resident Ryot in Bengal had a right of occupancy in his *Jote*; and *every* cultivator who settled permanently to cultivate as a member of the village community became *ipso facto* a resident Ryot. They hold that recognition as a resident Ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to the established local rates and not at any higher rates. They believe that it was not the intention of the legislature in 1793 to alter this, or to confer on the Zemindars a power of enhancing either individual Ryot's rates or general local rates at pleasure, and they consider it almost certain that ordinary landlords had originally under the regulations no legal power of raising the customary prevailing rates at all. *Per contra*, they admit that, as a fact, ordinary landlords, profitting by special rules made in favor of auction-purchasers and devised to protect the Government Revenue, have persistently and with the sanction of the courts (though until lately not with that of the legislature) enhanced rents arbitrarily, and that this right cannot now equitably be denied to them. But, on the other hand they hold that the Ryot's position cannot equitably be altogether destroyed. This is, we believe, the extreme view of the Ryot's position, and the arguments may be summed up thus.

Firstly;—The existence of ancient customs of the nature of common law under which every *resident Ryot* in Bengal had a right of occupancy in his *Jote*; and every cultivator who settled permanently to cultivate as a member of the village community became *ipso facto* a resident Ryot; and that recognition as a resident Ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to the established local rates, and not at any higher rates.

Secondly;—That the Permanent Settlement did not alter this; and that under the regulations, a landlord had not the power to enhance rent.

Thirdly;—That as a matter of fact previous to the enactment of Act X of 1859, the landlords taking advantage of rules framed for the benefit of auction-purchasers and for the protection of public revenue did as a matter of fact enhance rent through courts.

Fourthly;—That when on the one hand this right cannot now equitably be denied to them, on the other hand, the Ryot's position cannot be equitably destroyed.

We will premise, that according to all rules of evidence, historical or legal, and according to those first principles on which these rules are based, the *onus* of proving the affirmative of the first of these propositions is on those who advance it, as it is at variance with laws and usages existing at the present day and also at variance with the expressed opinions of the learned judges of our Highest Courts of judicature. We will examine the proofs which they bring forward to support their position.

As to the first of these points, the evidence adduced is, the use of the term *Khudkast Ryot* in the Regulations and it is from the meaning of the term *Khudkast Ryot*—the meaning of which the Commissioners have not been able to fix at all, (Vide Sec. 212 of the Draft Rent Bill where the term is yet used and no definition given in the preliminary Chapter of definitions) that this customary common law is sought to be educed. The earliest mention of these *Khudkast* Ryots is we suppose in clause 2 section 60 of Reg. VIII of 1793; and as this section is not applicable to Behar, it follows perforce, from the above reasoning that at least such customary common law only deducible from the use of the term *Khudkast* did not exist in this province. However, the question even where the term was used would be :—1st. What is permanently settling to cultivate as a member of the village community (*i.e.*) after what length of time it is to be said that a cultivator thus settles himself. 2ndly. What is recognition as a resident Ryot? When, how and by whom? These questions are all left unanswered. The ancient village community, as Mr. Elphinstone describes it, traces of which, however, are now neither discernible in Bengal nor in Behar consisted of the village landholders, tenants, permanent and temporary, and others who do not concern our present purpose. A

stranger could only come in as a landholder by purchase; and as in those good old days, Ryots whether permanent or temporary, could not sell their holding, a man could come in as a tenant only with the consent of the landholders. Now if in process of time, he would build a residence in the village where he cultivated, retain his holding during his life, and transmit the same to his children, the tenancy which would be thus transmitted to his descendants, would be a permanent tenancy in a village community. (Vide Elphinstone's India. p 73). This is why *Khudkast* Ryots are sometimes translated in the Regulations as *resident hereditary Ryots*. It is not thus the first settler who came to have such right; but his descendants to whom he transmitted such right; and what was the nature of this right; some claim of occupancy so long as the *Khudkast* Ryot paid rent. This might or might not have been understood in 1793, but shortly after came to be the law with regard to the evictfon of these Ryots (Vide Sec. 15 clause 7 of Reg. VII of 1799). It was extremely doubtful whether they were entitled to retain at any privileged rate of rent. (Vide Elphinstone. p. 74).

The authority for this opinion is given in a note from which we learn that in 1818, a call was made by the Bengal Government on the Collectors of all the provinces not under the Permanent Settlement, for information respecting the rights of the Permanent ryots. Of fourteen collectors, eleven considered the landholder to be entitled to raise his rent at pleasure, and to oust his tenant whenever he could get better terms elsewhere; two Collectors (those of Etawa and Seharunpur seem to have thought that the landlord's rent should not be raised unless there was an increase in the demand of Government: the Collector of Bundelcund alone declared the *Khudkast* ryot's right to be as good as his of whom he holds. The members of the Revenue Commission, in forwarding those reports, gave their opinion that landholders conceive themselves to possess the power of ousting their tenants, although from the demand for ryots it is not frequently exercised. The government at that time doubted the correctness of these opinions, and called for further information; which, although it threw much light on the question, did not materially alter the above conclusion.

Mr. Ross, a judge of the chief court, likewise, in a very judicious minute of 22nd March, 1827, states that a fixed rate never was claimed by mere ryots, whether resident or non-resident, in the upper provinces; inquires when such a fixed rent was in force; and whether it was intended to remain fixed, however the value of the land might alter? and concludes as follows:—"As to the custom of the country, it has always been opposed to such a privilege, it being notorious that the zemindars and other superior landholders have at all times been in the practice of extorting from their ryots as much as the latter can afford to pay." Elphinstone's History of India pp 273 and 274.

It is then said that this ancient customary law of India is to be traced from the Institutes of Manu and a text is relied on to the effect that "land is the property of him who cuts away the wood" or in the words of the Commentator "who tilled and cleared it." But in these Institutes, the king is said "to be the lords paramount of the soil" and it is also laid down "that occupiers of land are to be responsible to the king if they failed to sow it." Then it is said that such customs have been recognized by Reg. VII of 1799, where all ryots are said to be included in the term "Ryots with rights of occupancy" as used in Sec. 15 and still later in a decision of Sudder Dewany Adaulat of 1855. Turning to the regulation we find that only a particular class (i e) the class of *Khudkast* Ryots mentioned in the exception to section 60, is meant, and referring to the decision of the Sudder Dewany Adaulat, we find that the question involved in that case was whether a Ryot's holding was transferable; and the Judge's held that it was not, in as much as the Ryot had no *equivalent to offer*.

If then any such customary right exists, it may well be left to be determined by the Civil Courts. All that is wanted is a clause in the Rent Law saving such customs and these customs would take care of themselves. The Indians are peculiarly tenacious of their custom and with them customs do but in rare cases, die. *

* As a strong proof of the vitality of customary rights in Behar, we may set the example of *Goozast* tenure in Shahabad; which though not

Secondly ;—The Permanent Settlement did not certainly affect the position of the Ryots; but if we are to believe contemporary records, this position was not much better than that of *serfs*. We have shown how the zemindars as stewards of Government Revenue exercised over them a sort of legalized tyranny. It was one of the great objects of the Permanent Settlement to protect them from this; and this protection could be only extended, without seriously affecting the interest of the Public Revenue at that time, by keeping the other rights of the Zemindars *intact*,—rights, the exercise of which would not be necessarily oppressive. We will examine the law as was laid down with respect to eviction and enhancement.

We have shown how the Zemindar had the power given to him to let his lands to whomsoever he pleased and in whatever manner he pleased under certain restrictions The restrictions do not refer to the amount of rent. It refers merely to illegal cesses and *Abwabs*. The Regulations certainly speak of *Perganah* rates. One of the earliest mention of the *Perganah* rate, occurs in Regulation XLIV of 1793. From the Preamble and provisions of that Regulation we find:

1st. That at the renewal of a *Pottah* the rate of rents was left to be determined by the contracting parties. The preamble to this regulation speaks of a "discretionary power" being vested in Zemindars to fix the amount of rent which they could demand from Talukdars and Ryots, and section 2 leaves them the power to fix their own terms.

2nd. The existence of certain usages or *Perganah* rates at which, not that *the ryots were entitled to demand Pottah*, but the proprietors, being auction-purchasers at a revenue sale, were entitled to demand rents from the Ryots, whatever might have been their engagements with the late owner.

3rd. That the mischief which the Government had then to guard against was not arbitrary enhancement of rent, but improvident fixity and abatement of such rent.

4th. Government declared that according to established usage it was entitled to get as its dues a certain proportion of the annual produce of every bigah of land, either in money or kind, and that such right was inalienable without its express sanction.

5th. That on the public assessment being fixed, the proprietor of land was entitled to appropriate to his own use the difference between the value of such proportion of the produce, and the sum payable to the public.

The *Perganah* rate thus evidently is the certain proportion of the annual produce of every bigah of land, demandable according to the local custom, either in money or kind, which, according to the ancient and established 'usages' of the country, was the share of the ruling power (it certainly cannot be less) and which share the parties, with whom a Permanent Settlement of the Government Revenue had been made, were entitled to receive from the Ryots, these persons being entitled to appropriate to their own use the difference between the value of such proportion of the produce and the sum payable to the public; or in other words, the sum total of Zemindars' rent-roll, collected according to the *Perganah* rates, is equal to the sum total of the State proportion of the produce from every bigah of land,—an equation from which it follows that the *Perganah* rate is equal to the State proportion of the produce per bigah.

The parties with whom the Settlement was made would be thus entitled in virtue of the right which was thus transferred to them and under the correct interpretation of the term '*Perganah* rates,' as used in the regulation, to all advantages arising from increase of prices or produce. That this was the intention, also appears from the provisions of Section 51, under which the Talukdar's rent could be enhanced according to the capability of the soil. Now where was the Talukdar to get this increased rent to pay to the proprietor, unless he was to exercise a like power of enhancement with respect to his tenants? No restriction appears to

recognised by the Regulations has always maintained its ground. It is similar to the *Khudkast* holdings in Bengal. The tenure derives its name from the Persian verb root *Goqrasthan*, which means to *pass* signifying a tenure which *passes* from father to son, or from generation to generation. It is heritable, devizable and transferable. How much of the lands of Shahjahanabad are held in *goozast* tenure it is hard to say; but the *Goozastdars'* position will be seriously affected when by the operation of the proposed *levelling* law their present high position amongst the Ryots, will be levelled down to an equality with that of ordinary Ryots.

have existed as to the Zemindar's right of fixing his own terms; nay, if he was an auction-purchaser at a public sale, he could even cancel existing engagements, and demand increased rent by the service of a notice on the Ryot (Vide Sec. IX of Reg V of 1812.) There is no trace to be found in the earlier Regulations of Ryots with fixed rent. In the permanent plan for the ease and security of Ryots, as drawn up in Section 28 of the Resolutions on the Bengal Settlement quoted above the rule for *Pottahs* to be granted to Ryots by zemindars was thus laid down:

"They shall begin with those *Perganahs* where the impositions are most numerous, and having obtained an account of them, shall in concert with the Ryots, consolidate the whole as far as possible into one specific sum, but so that in no case the sums demanded from the Ryots shall exceed three articles; *viz*, *Ausul*, *Abwab* and *Khurcha*; having prepared this account, they shall submit it to the Collector for his inspection, after which it is to be enforced by the authority of Government, and any enhancement of the *Abwab* or *Khurcha* to be punished as an extortion."

There was no restriction imposed as to the enhancement of *Ausul* and no fixed rates appear to have been contemplated.

Act X of 1859 encroached on the landlord's right of enhancement in several ways.

First—By creating a class of Ryots with fixed rents, with a presumption of law in their favor.

Secondly;—By fixing the grounds on which alone the rents of occupancy Ryots could be enhanced.

From what we have said before, it will also appear that at the date of the Permanent Settlement, the landlord's right of eviction in all cases excepting that of *Khudkast* Ryots in Bengal was left unrestricted. The only restriction under the condition of things as then prevailed, was that imposed by the paucity of the number of Ryots, that is, by the natural rule of supply and demand.

The rule, that Ryots with rights of occupancy *(i.e.)* *Khudkast* Ryots were not to be ejected as long as they paid rent was first laid down in Reg. VII of 1799 and as we have seen, not by way of restricting the landlord's power of eviction; but by way of enabling him to eject for non-payment of rent even *Khudkast* Ryots whose *Pottahs* he was not to cancel by clause 2 Section 60 of Reg. VIII of 1793.

As to the third proposition, it is admitted that as a matter of fact, previous to the enactment of Act X of 1859, rents used to be enhanced through Courts. It is said that the landlords in this matter outwitted the courts and contrived to take advantage of the rules framed for the benefit of auction-purchasers and for the protection of Government Revenue. Does not this cut at the very root of the position advanced that before and after the Permanent Settlement, the landlords had not the power to enhance rents? for if that was so, why was the privilege given to auction-purchasers; why was this necessary in the interest of Government Revenue? The auction-purchasers could simply come by the estates as they did exist at the Permanent Settlement and they were not surely entitled to get anything more.

The fourth proposition requires no comment.

NOTE ON THE PROPOSED ABOLITION OF THE LAW OF DISTRAINT.

The Commissioners base their recommendation for the abolition of the law of distraint on the ground (*a*) that it is an off-set of the English law, introduced for the first time in India, by Regulation XVII of 1793; (*b*) that the limitations imposed upon this power, by Act X of 1859, greatly impaired its efficacy; and (*c*) that there is evidence of the positive abuse of this power in Behar and other parts of the country. As to the first of these grounds, we find that Regulation XVII of 1793, merely re-enacted with alterations and amendments certain other regulations passed by the Governor-General in Council in 1792, empowering landholders and farmers of land to distrain and sell the personal property of under-farmers, Ryots and dependent Talukdars, and their sureties for arrears of rent and revenue. It was not thus for the first time introduced in India by Regulation XVII of 1793. Notwithstand-

ing the high authority of the Members of the Rent Commission we cannot but say, that the law of distraint was not borrowed from the English law, but originated in the Hindu laws, and immemorial custom, under which the creditor always enjoyed the power of realizing his dues from his debtors, by coercive means. The power was also recognized by the Mahomedan conquerors of India. The State, as owner of zemindaries yet enjoys very extensive powers to coerce its Ryots to pay rent. The second argument is no less than this. By our Act X of 1859 we have taken from you much of the coercive powers that were given to you by Regulation XVII of 1793; this has impaired the efficacy of the power that still remains. It is now useless to you, and we will abolish this altogether. We opine the Commissioners could not have been serious in using this as an argument. The limitation imposed by Act X of 1859 was this: under the old regulation law, the landlords were empowered to distrain and sell the crops and products of the earth of every description, the grain, cattle and all other personal property wherever found of the defaulting tenant and of their sureties; under Act X, the power of distraint came to be limited to the produce of the land on account of which the rent was due.

As to the third ground, we hold that the argument will apply to all kinds of rights, which might have been ever misused by any individual enjoying the right. For example; some zemindars may be found abusing their rights (powers) as a zemindar; argue, abolish all their rights (powers) or in other words abolish, the class of zemindars. The zemindars say, why should you deprive us all of this power, the only one now left to enforce the prompt payment of our rent when some of our members only have been found abusing their powers; are not there some black sheep in all flock; why should the innocent suffer for the fault of the guilty. Why can't you guard the infraction of your laws, the abuse of this and other powers by enacting and enforcing your Penal laws. The Commissioners admit in Para. 9 of their report, that the Ryots as a body are daily becoming better acquainted with their rights, and they may be well trusted to protect themselves from the zemindary oppressions in the matter of the exaction of *illegal cesses*. If they can be trusted to protect themselves in that matter, why can't they be trusted to protect themselves from zemindary abuse in the matter of distraint also. Admittedly, the zemindars have enjoyed the power from 1793, its harshness has been done away with by the enactment of 1859, and what power remains is very useful in as much as the mere existence of the power, acting as it were, as a threat, serves the purpose of inducing the Ryots in many cases, to pay their rents promptly.

N. B. For a lengthened discussion on this subject, the Committee beg to refer to the speech of their President, at the extraordinary meeting of the landholders of Behar, proceedings of which are herewith appended.

THE PROCEEDINGS OF AN EXTRAORDINARY MEETING OF THE BEHAR LANDHOLDERS' ASSOCIATION, HELD ON THE 5TH NOVEMBER 1880.

THE PROCEEDINGS OF AN EXTRAORDINARY MEETING OF THE BEHAR LANDHOLDERS' ASSOCIATION, HELD ON THE 5TH NOVEMBER 1880.

Pursuant to notice issued by the secretary Behar Landholders' Association a meeting of the Zemindars of Behar was held at Bankipur, in the Sujjubagh House, at 3 P. M. on the 5th November, to discuss the provisions of the Draft Rent Bill submitted by the Rent Commission to the Government of Bengal for approval, and to adopt memorial protesting against its enactment.

The were present at the Meeting :—

His Highness the Hon'ble Lachmesswar Sing Bahadur, Maharajah of Durbhangah, H. H. the Maharajah of Hatwa (represented by Babu Sheo Protap Narain B. L., his agent); H. H. the Maharajah of Doomraon, (represented by Babu Jaiprokash Lal, his Manager); Babu Sheopersad Sing (Shahabad); Babu Raghunundon Sing (Shahabad); Babu Basawan Sing (Shahabad); Babu Baidyanath Sahoo (Shahabad); Babu Harbuns Sahai (Shahabad, Hony Secretary of the Behar Landholders' Association); Babu Jaiprokash Lal (Shahabad, and Manager, Raj Doomraon); Babu Bisseswar Sing (Shahabad); Babu Salig Ram Sing (Shahabad); Munshi Sheo Protap Narain (Sarun); Munshi Mahomed Amir (Patna); Moulvi Mahomed Ahmed (Patna); Moulvi Mahomed Wahid (Patna); Kazi Reza Hossein (Patna); Mir Sumshul Hoda (Patna); Moulvi Zelal-u-din (Patna); Munshi Janki Sahai (Patna); Rai Sultan Bahadur (Patna); Koer Sukraj Bahadur (Patna); Syed Tafuzual Hossein Khan (Patna); Sheikh Feda Ali (Patna); Sayed Wajid Hossein (Patna); Amir Ali Khan (Patna); Moulvi Wahid-u-din (Gya); Moulvi Abdul Latif (Gya); Babu Bhoolun Lal (Tirhut, and Personal Assistant to H. H. The Maharajah of Durbhangah); Babu Jamuna Persad Sookul (Tirhut); Hajji Mahomed Wahid Ali Khan (Tirhut); Moulvi Mahomed Asighar (Tirhut); Syed Basherut Ali Khan (Monghyr); Babu Gobind Charan (Bhagulpur); Moulvi Syed Ali Ahmed (Purnia—and Dewan to Rajah Haider Reza); Bahadar Ali Khan (Barh); Babu Govind Proshad, Babu Madan Mohun Lal (Patna); Rai Jai Kissen (Patna). The Zemindar of Kanouli (Tirhut); the Zemindar of Chainpur (Sarun); Munshi Sham Narain (Patna); Munshi Ehia (Patna); Omed Bahadur (Patna); Mahomed Shere (Behar); Syed Latafut Hossein (Patna); Hakim Mahomed Amir (Patna Moulvi Sahid (Patna); Babu Kristo Chandra Ghose (Patna); Babu Radhakant (Patna); Shah Mehdi Hossein, Shah Sahid Hossein; Shah Latafat Hossein (Patna and Monghyr); Abdul Rahman Khan (Patna); Syed Ali (Patna); Syed Mirza; Khejeh Ali Mirza; Syed Amir Jan, Syed Ezahar Hossein, Syed Jishan Hossein (Patna); Khejeh Asadub (Patna); Hafiz Shere Ali (Patna); Sheikh Wahid Ali (Patna); Moulvi Aleh Ahmed [Patna]; Sheik Elahi Baksh [Patna]; Syed Tasuduq Hossein Khan [Patna]; Nonit Babu; Babu Balkishen; Babu Het Narain Singh (Patna); Babu Kunj Behari Singh (Patna); Babu Bunwari Lal; Shah Liaqut Hossein [Patna]; Syed Enaet Hossein [Patna]; Syed Mahomed Qualim [Patna]; Shah Mazhar Hossein [Patna]; Babu Durga Dutt [Patna]; and about 400 more wealthy representatives of all parts of the Province of Behar. There were also present some representatives of the press; the Reporters of the *Englishman* and *Indian Mirror* [Calcutta] and *Behar Herald* [Patna]. H. H. the Maharaj Kumer of Bettiah had intended to be present, but owing to unavoidable causes was compelled to absent himself. Letters expressive of cordial sympathy with the object of the meeting were also received from all parts of this province from Zemindars who could not attend. His Highness, the Maharajah of Durbhangah President of the Behar Landholders' Association was unanimously voted to the Chair.

His Highness the President, in opening the proceedings, said that the object with which this extraordinary meeting had been convened was for the purpose of taking into consideration the provisions of the Draft Rent Bill submitted by the Rent Commissioners to the Government of Bengal for approval. Some three years ago, the Government had decided that changes were necessary in the existing law between Landlord and Tenant, and that some greater facility should be given to Zemindars to enable them to collect rents, at the same time making other and equivalent provisions to afford more rights to Ryots than they then enjoyed. The decision of Government had now borne fruit in the shape of the Rent Bill under discussion, which His Highness, the President considered to be altogether one-sided, and which, if passed, was calculated to give rise to immense litigation, annoyance, and heavy loss to Landholders with no advantage to Ryots. The chief objectionable item was undoubtedly the abolition of distraint and the hypothecation of land, in lieu of the produce of it, in the event of ryots falling into arrears with their rent. Hitherto distraint had been

the great engine in the Landholder's hands to enable him to realise his rents. Legalized of late years, distraints of produce had from time immemorial been the acknowledged custom in India with Zemindars to recover that which was but their due by right; and the earliest form of payment of rent, within memory, was by the giving over, on the part of the Ryots, of a portion, generally one half, of the produce of the lands rented. This custom might be accepted as the earliest form of distraint also, as the moiety of the produce bore the form, as it were, of payment of rent in advance. These ancient customs, it was now under consideration to do away with, and to substitute in their place the hypothecation of lands. The introduction of such a measure must inevitably be suicidal to the interests of Zemindars, as some speedy and legal means for the realization of their rents should be allowed to them, and it is everywhere admitted that distraints in accordance with the customs of the country gave these means to them without infringing on the interests of the ryots. It remained now, to consider whether the hypothecation of land would furnish the place of distraints of produce or give Landlords a means of securing their rights. Again, the proposed Bill provided for the realization of arrear rent on account of tenures, occupancy holdings, and ordinary ryots' holdings. But in Behar there are very few, indeed, of those which affect in any way Landlords in this province. The proposed law gives a summary process for the sale of tenures on account of arrears, but does not provide for a similar process in respect of ryots' holdings. Of course, occupancy rights can be sold, but only in execution of decrees from the Civil Courts, or in other words after the tedious and expensive process enjoined by the Civil Procedure. Thus at the outset, whilst distraints of produce secured the Landlords their dues in matters of arrears of rents without recourse to law, the New Bill makes this step compulsory, and with it will come its attendants, delay and expense. Under any circumstance, if the Landlord resorted to this legal process and put up occupancy tenures for sale, his chances of recovering his arrears of rent were still doubtful. Villages in Behar, as in most other parts of India, are compact and generally of one community, the individual members of which have common ties and sympathies. Supposing therefore that the land of one such individual were put up for sale, the land upon which he, his father and fore fathers, had dwelt for many past generations, what would be the result? The answer is simple. The whole community would combine not to buy it, and no outsider will be easily found bold enough to do so under the circumstances and with a full knowledge of the unwelcomeness of his presence. Mr. Field is in error when he surmises that, if one villager's land is put up for sale, another will greedily buy it. His Highness thought that those present would agree with him that the proposed relief to landlords, would be found insufficient according to the tenor of the proposed Bill. There exists a class of tenants peculiar to Purneah and Dinagepur, who are semi-nomadic, who come to villages, stay for two years, cultivate and enjoy the lands they rent, and after the expiry of that short period decamp. There is no provision made in the new Bill for the sale of holdings lower than occupancy, therefore in the case of the ordinary short term ryot, often the most troublesome as regards his rent, distraint is disallowed, and no other remedy substituted, and in these cases, as also in those of the semi-nomads, if there be failure in the payment of rents, it would be difficult, under the unprovisional nature of the proposed Bill, to get anything out of defaulting ryots, even by civil process.

With respect to compensation to ryots, it appeared to His Highness that this provision as contained in the Bill was carried to a ridiculous extent. A ryot who has held, for say three years only, his right to land, may be evicted for non-payment of rent. The landlord then, in order to secure or realize his arrears, must go to court. This eviction and subsequent claim to just dues must only be accomplished by the means of a long legal process. The eviction having at length been effected, the Landlord is bound to give his defaulting tenant compensation for trees which the latter may have planted, or huts he may have built on land for which he has paid no rent and also for disturbing him. The proposed Act lays down a ruling that a ryot holding land for three years, is not liable to any enhancement of rent, and if such be imposed and he considers the rate too high, he is to be permitted to leave in spite of his arrears, but, the zemindar must compensate him for disturbance, and improvements. Compensation is to be assessed by the court, and the chances are that the property will be overvalued. The landlord of course secures this compensation for rent due, but so far as he is concerned, the value of the trees and huts will be a poor set-off against the rent. With the disallowment of distraint the landlord cannot possibly have any fair means of securing his own interests, even by the sale of the ryot's effects—and the latter is even permitted to have a prior lien on them, adverse to his landlord's rights. His Highness then gave the following illustation of the probable working of the New Rent Bill in regard to the above:—A has been given a ryot's holding for a year, and in the course of that year has defaulted in his rent, or otherwise shown himself to be a bad ryot, and one to be got rid of. A can only be evicted by civil suit. During this process A is holding the land against the landholder's will, and thereby preventing B, a good ryot, coming into possession. Thus A pays no rent himself, preventing the landlord getting the rent B would gladly have paid. The only relief the new law would give the landlord, is that he can claim from A the letting value of the land. A being, most probably, a man not in a position to pay such value, the landlord loses the worth of his—land for a year in consequence. His Highness observed that he saw no ground for the new and exceptionally unfavourable Rules—from a landlord's point of view—for Behar He could not understand why a bad Ryot, roving about on an estate for 12 years, a year here, or

a year or two there, and if for the last 3 years of the period he manages to remain on one bit of land, that he should acquire the right of occupancy in it. A great deal was to be apprehended by the changing of land by ryots in Behar, and it would be found that these change more than ryots in any other part of India.

His Highness then concluded with the following remarks:—"This Act, if passed, would repeal in a great measure the permanent Settlement, as, under the provisions of it, the Zemindar's proprietory right will gradually disappear, the ryots eventually acquiring new and absolute rights. The Zemindar will become a mere receiver of rents fixed, not by himself, but by Government, which he will find extremely difficult to realise. His revenues will be embarrassed, and his payments to Government will assuredly become irregular; in fact, if the new Act is carried, the regime of Zemindars must decline gradually and with it the general contentment and prosperity of the ryots. Mahajans will be resorted to, and they alone will be those benefited by an Act which in no way concerns them. The extension of occupancy rights will press very heavily on the proprietors, and it seems to me that speaial provisions for allowing occupancy rights to be acquired, are required to be framed to meet the peculiar circumstances of Purneah and Dinagepore Jotes only, and should be legislated for specially; but the landlords in other parts of Bengal should not be made to suffer in order that relief may be given to cultivators in these Jotes. A memorial containing a firm and respectful protest against the new Bill has been prepared, which will be read to you, and I would invite remarks from any of you inclined to make any on it, as also on the subject on which, I fear, I have spoken at great length.

Babu Gobind Churn, M. A. then read in the vernacular, a "Note on the Rent Law by the Committee of the Behar Landholders' Association" to the meeting, as also the memorial to His Honor the Lieutenant-Governor prepared by the same Association. These were received with marked approbation.

After a slight pause, His Highness, the President proposed the following resolution:—"That the provisions of the Draft Rent Law prepared by the members of the Rent Commission, vitally affect the proprietory interests of the Zemindars as guaranteed to them by the Permanent Settlement." The resolution was seconded by Kumar Sookraj Bahadur, and Babu Harbans Sahai, in supporting it, addressed the meeting, and after pointing out the disadvantages which would accrue to Zemindars by the passing of the New Rent Bill, stated that its conversion into law would be a grand opportunity for pleaders and Muktears to amass their fortunes, and the Government Revenues would show enormous increase on account of Court fee stamps in consequence of the heavy litigation which the provisions of the Bill under discussion would entail. He surmised that both landlords and tenants would be impoverished and that it was the duty of Government to better the feelings of both towards one another instead of alienating them. A people who were disloyal, were punished with confiscation of their properties; but why, therefore, the speaker asked, should the natives of Behar and Bengal be now treated as such, when they were noted for their loyalty to Government. Babu Gajadhur Proshad also spoke in support of the resolution. The Resolution was carried unanimously.

Babu Jaiprokash Lal proposed the second Resolution, viz; "That the provisions of the Bill do not fall within the original scope of the amendment which had been proposed to be made in the law of landlord and tenant, nor do they fall within the power reserved to the Governor-General at the time of the Permanent Settlement, to enact laws for the protection and welfare of dependent talukdars and ryots. That the advantages offered by the Bill to the ryots are substantial and new while those offered to the landlords are *nil*, and that by no means can the one be said to be an equivalent to the other. The Bill, in fact, proposes a re-distribution of property between landlords and tenants, without offering any compensation to the landlord for what is taken away from the sum of their rights." He also said that the original object was to afford to the Zemindars, some facility for the collection of their rents; but the Bill, instead of affording any such facility confiscates all their rights, that is indeed a short way of doing justice; that the provisions are not at all justified by the power reserved to Government that the rights conferred to Zemindars are in no way equivalent to those given to Ryots.

Babu Bhuwan Lall, the personal assistant to H. H. the Maharajah of Durbhangah in seconding the Resolution discussed all the points of law affecting the rights of both Zemindars and Ryots. Moulvi Syed Shamsul Hodah, Moulvi Fazul-ul Rahman, and Moonshi Mahomed Amir supported the speaker, and the resolution was carried.

Babu Sheoprotab Narain (Agent for the Hatwa Raj) proposed the 3rd resolution: "That under the present circumstances of the country, when the tenants were daily awakening to a consciousness of their rights, and the Zemindars do not look with disfavour on the assertion of such rights as are vested in them by the present law, and when there are manifest signs all around that the condition of the peasantry is daily improving in Behar as in Bengal, the Zemindars of Behar justly look with apprehension to the unsettlement of the present laws, and with it the destruction of the customary tenures which have prevailed for generations in Behar. They are also apprehensive that the special provisions for Behar are calculated to affect seriously the interests of agriculture in this province.

Maulvi Jalal-uddin, supported by Syed Useff Hossein Khan and Babu Saligram Sing, seconded the Resolution, which was carried.

The following is the fourth Resolution, proposed by Munshi Sheoprotab Narain, seconded and supported by Kazi Reza Hossein and Maulvi

Ahsein:—"That holding these views, the meeting unanimously resolves to adopt the memorial of the Behar Landholders' Association to His Honor the Lieutenant-Governor of Bengal just read, and as they think that the Draft Bill is open to the criticisms which have been made with respect to it in a note prepared by the Committee of the said Association showing how the provisions of the Bill are detrimental alike to the interests of the landlord as also of the tenant; they unanimously resolve to adopt the said note as a part of their memorial."

Carried unanimously.

Kazi Reza Hossein then proposed, seconded by Sayad Bahadur Ali Khan: "That a committee consisting of a number of gentlemen with power to add to that number, be appointed in each district of the province of Behar for the purpose of obtaining signatures to the memorial and that the same, when signed, be sent to Government through the Behar Landholders' Association.

The Resolution was carried.

Munshi Fazl-ul Rahman, seconded by Kazi Reza Hossein, proposed the last Resolution *viz.*, "That the zemindars of Behar beg most respectfully to offer their hearty thanks to the worthy President of the Behar Landholders' Association."

This resolution was received and carried with loud applause, and the meeting broke up at about 4-50 P. M.